**Victorian Public Sector – Annexure Part B Special Conditions of Contract for use in association with Australian Standard General conditions of contract for AS 2124-1992**

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| --- | --- | --- | --- | --- | --- |
| **Revision:** | | **Date:** | **Clause reference:** | **Details:** | **Endorsed by:** |
| August 2011 | | 8 August 2011 | Not applicable | This record of revisions included. | DPCD |
| August 2011 | | 8 August 2011 | Clause 52: Victorian Industry Participation Policy | Amended to include an option for departments to replace references to the Principal with references to the Superintendent.  Drafting note also included. | CCAP |
| December 2011 | | 19 December 2011 | 42.3A, 42.6, 42.7, 42.8, 47, 47.2A, 54, 55 & 56 | Correct anomalies and harmonise as suggested by Minter Ellison | CCAP |
| July 2012 | | 12 July 2012 | New Clause 57 Victorian Code and Victorian Guidelines | New clause to comply with the requirements of the *Victorian Implementation Guidelines to the Victorian Code of Practice for the Building and Construction Industry* | CCAP |
| October 2012 | | 5 October 2012 | New Clause 58 National Code and National Guidelines | To provide for compliance, where applicable, with the National Code and National Guidelines | CCAP |
| February 2013 | | August 2012 |  | Responsibility for administration of the PDCM Act moved from DPCD to DTF. | Minister |
| February 2015 | | February 2015 | Removal Clause 57 Victorian Code and Victorian Guidelines | Removal of clause following abolition of the *Victorian Code of Practice for the Building and Construction Industry* | CCAP |
| February 2015 | | February 2015 | Clause 58 changed to clause 57 and amended | To replace National Code and National Guidelines with the Building Code 2013 and Supporting Guidelines | CCAP |
| September 2017 | 26 September 2017 | | Throughout | Update AS4300 Special Conditions as suggested by Minter Ellison | DTF |
| January 2018 | 10 January 2018 | | 2, 55 | Update reference to *Occupational Health and Safety Regulations* 2017 | DTF |

**Introduction**

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| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.** | |
|  |  |
| **ANNEXURE to the Australian Standard General conditions of contract (AS2124-1992)** | **PART B** |

Table 1 below identifies Clauses which have been deleted, have been amended and differ from, or have been added to, the Australian Standard AS 2124-1992.

|  |  |  |  |
| --- | --- | --- | --- |
|  | Clauses which have been deleted from the General Conditions in AS AS2124-1992: | |  |
|  |  | **No clauses deleted entirely** | |
|  | The following clauses have been amended and differ from the corresponding clauses in AS AS2124-1992: | |  |
|  |  | **1; 2; 3.3; 4.4; 5.2; 5.3; 5.4; 5.5; 5.6; 5.7; 5.9; 6.1; 7; 8.1; 8.3; 8.4; 8.6; 9.1; 9.2; 10; 11; 13; 14.1; 15; 16.1; 16.3; 18; 19; 21.3; 21.6; 23; 27.1; 29.1; 30.6; 31.1; 33.2; 35.3 35.5; 35.6; 35.7; 35.8; 36; 37; 40.1; 41; 42.1; 42.2; 42.3; 42.5; 42.6; 42.7; 42.8; 42.9 43; 44.2, 44.7; 44.10; 44.11; 46.1; 46.2; 47.2; 47.3.** | |
|  | The following clauses have been added to those of AS AS2124-1992: | |  |
|  |  | **3.4; 6.3; 7A; 14A; 14.3; 29.4; 35.2A; 35.6A; 42.1A; 42.5A; 42.5B; 47.2A; 49; 50; 51; 52; 53; 54; 55; 56; 57.** | |
|  | The amendments to the following clauses apply unless struck out by the Principal (Principals should not strike out the amendments unless the issues addressed by the amendments have been covered in the specification): | |  |
|  |  | **8.1; 14; 15.** | |

**Table 1: Victorian Public Sector changes to AS 2124 – 1992**

The provisions of the document described as “General conditions of contract (AS 2124-1992)” which form part of the Contract between the parties are amended, added to, and varied in the following respects:

Clause 1 Construction of Contract

Clause 1 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 2 Definitions

Clause 2 is amended as follows:

* **The existing definition of 'Contract' is deleted and replaced with the following new definition:**

'Contract' means the agreement between the Principal and the Contractor, which is constituted by this document together with the other Contract Documents.

* **The existing definition of 'Date for Practical Completion' is amended by replacing the words "the Annexure" with "Annexure Part A".**
* **The existing definition of 'Date of Acceptance of Tender' is deleted and replaced with the following new definition:**

'Date of Acceptance of Tender' means the earlier of:

(a) the date of execution of the Formal Instrument of Agreement by the last of the parties to execute that document; or

(b) the date which appears on the notice in writing of acceptance of the tender (if any);

* **The existing definition of 'Practical Completion' is amended by:**
* **deleting the word "and" at the end of subparagraph (b) and replacing it at the end of subparagraph (c);**
* **inserting new subparagraph (d) as follows:**

(d) without limiting subparagraph (c), the Contractor has supplied to the Principal:

(i) the originals of all operating and maintenance manuals for all plant and equipment forming part of the Works; and

(ii) all notices, permits, approvals and certificates required to be obtained from relevant authorities.

* **The existing definition of 'Principal' is amended by replacing the words "the Annexure" with "Annexure Part A".**
* **The existing definition of 'provisional sum' is deleted and replaced with the following new definition:**

'provisional sum' means an amount described as such (or an amount described as an allowance or an estimate or a prime cost amount) in Annexure Part A or elsewhere in the Contract Documents.

* **The existing definition of 'Site' is deleted and replaced with the following new definition:**

'Site' means the area identified as such in the Annexure Part A.

* **The existing definition of 'Superintendent' is amended by replacing the words "the Annexure" with "Annexure Part A".**
* **The existing definition of 'Works' is amended by inserting the following words after the words "including variations provided for by the Contract":**

(together with any minor or incidental work which, in the opinion of the Superintendent, is reasonably and obviously necessary for the completion of the work under the Contract or which is reasonably capable of inference from the Contract Documents).

* **The following new definitions are added to Clause 2:**

'Administrative Completion' means the satisfaction of the requirements described as such in Annexure Part A;

'Business Day' means a day that is not a Saturday, Sunday, Statutory or Public Holiday;

'Certificate of Administrative Completion' means a certificate issued by the Superintendent pursuant to clause 42.5B;

'Certificate of Practical Completion' means the certificate referred to in Clause 42.5 in the form of Annexure Part F;

'Conditional Certificate of Practical Completion' means a certificate issued in circumstances where Practical Completion has not been reached in the form of Annexure Part G;

'Contract Documents' means the documents described as such in Annexure Part A;

'Date for Administrative Completion' means:

(a) where Annexure Part A provides a date for Administrative Completion, the date; or

(b) where Annexure Part A provides a period of time for Administrative Completion, the last day of the period,

but if any extension of time for Administrative Completion is directed by the Superintendent or allowed in any arbitration or litigation, it means the date resulting therefrom;

'Date of Administrative Completion' means:

(a) the date evidenced in a Certificate of Administrative Completion issued by the Superintendent as the date upon which Administrative Completion was achieved; or

(b) where another date is determined in any arbitration or litigation as the date upon which Administrative Completion was achieved, that other date;

'direction' means an instruction by the Superintendent or the Principal:

(a) described as a direction;

(b) having regard to the nature of the communication from the Superintendent or the Principal, is properly characterised as a communication that the Contractor must comply with;

'Final Payment Schedule' means a payment schedule issues by the Superintendent to the Principal and to the Contractor pursuant to Clause 42.8;

'Formal Instrument of Agreement' means the document in the form of Annexure Part E;

'Intellectual Property Right' means any patent, registered design, trademark or name, copyright or other protected right;

‘Legislative Requirements’ includes—

(a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory in which the work under the Contract or any part thereof is being carried out;

(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the work under the Contract; and

(c) fees and charges payable in connection with the foregoing;

'OHS Law' means the Occupational Health & Safety Act 2004 (Vic), the Occupational Health and Safety Regulations 2017 (Vic) and all other applicable occupational health and safety legislation, regulations, rules, Codes of Practice and Australian Standards as amended from time to time;

'payment claim' means the claim referred to in Clause 42.1 in the form of Annexure Part H;

'Principal's Policies and Procedures' means all policies and procedures issued by the Principal from time to time in relation to the work under the Contract of the type being performed under this Contract or the conduct of a person such as the Contractor in carrying out such work, and any policies and procedures identified in Annexure Part A;

'State Entity' means the Crown in the right of Victoria, Ministers of the Crown and a public body (as that term is defined under the Financial Management Act 1994 (Vic));

'Statutory or Public Holiday' means a day that is wholly or partly observed as a public holiday throughout Victoria;

‘variation’ means any of those actions which the Superintendent is able to direct the Contractor to do by reason of Clause 40.1 (a) - (e).

Clause 3 Nature of Contract

Clause 3.3 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 4 Bill of Quantities

Clause 4.2 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 5 Security, Retention Moneys and Performance Undertakings

Clause 5.2 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 5.3 is amended by deleting the first paragraph and replacing it with the following:

The security shall be in the form set out in Annexure Part A, or other form approved by the party having the benefit of the security.

Clause 5.4 is deleted and replaced with the following Clause 5.4:

Security shall be lodged prior to the earlier of:

(a) 28 days after the Date of Acceptance of Tender; or

(b) the commencement of the Works on Site by the Contractor.

If the Contractor does not lodge security in accordance with this Clause, the Principal may, notwithstanding Clause 42.1, withhold payment of moneys otherwise due to the Contractor until the Contractor lodges the security.

Clause 5.5 is amended by:

* deleting paragraph (a) and replacing it with the following new Clause 5.5(a)

(a) the party has become entitled to exercise a right under the Contract in respect of the retention moneys and/or security or there is a debt due under the Contract to the party from the other party;

* **replacing in subparagraph (b) the words "the Annexure" with "Annexure Part A";**
* **replacing in subparagraph (c) the words "the Annexure" with "Annexure Part A";**
* **adding the following paragraph to the end of the Clause:**

A party is not entitled to commence any proceeding, seeking relief by way of injunction or any other relief, which has as its objective the obtaining of an order preventing the other party from having recourse to retention moneys and/or security even though the party contemplating the commencement of proceedings may assert that there is no right to have recourse to retention moneys and/or security.

Clause 5.7 is amended by:

* **deleting the first paragraph and replacing it with the following:**

At the times identified in Annexure Part A, the Principal’s entitlement to security and retention moneys shall be reduced to the percentage thereof stated in Annexure Part A or, if no percentage is stated, to 50 percent thereof.

* **inserting the following after the existing third paragraph (that is the paragraph beginning with the words “The Principal shall, within 14 days…”):**

Notwithstanding anything in this Contract, if the Superintendent determines that the Contractor is required to provide replacement security under Clause 42.5A following the issue of a Conditional Certificate of Practical Completion the Principal is not obliged to release any security until the Contractor has provided replacement security in the amount of security certified by the Superintendent as required under Clause 42.5A.

The Principal shall release the replacement security provided under Clause 42.5A within 14 days of being obliged to do so under Clause 42.5A.

Clause 5.9 is deleted and replaced with the following:

The Principal does not hold any retention moneys on trust. The Principal is permitted to hold any retention money as part of its general unallocated cash reserves or in any similar manner. The Principal shall own any interest earned on retention moneys.

Clause 6 Evidence of Contract and Tender

The heading is amended to read "Evidence of Contract and Tender".

Clause 6.1 is deleted and replaced with the following:

Unless a Formal Instrument of Agreement is executed by the parties, the Contract Documents shall constitute the Contract.

A new Clause 6.3 is inserted as follows:

***6.3 Contractor's Tender***

(a) The Contractor warrants that all representations made in the Contractor's tender, including the tender schedules, are true.

(b) Unless agreed in writing by the Superintendent (such agreement not to be unreasonably withheld) or otherwise specified in the Principal's Project Requirements the Contractor must:

(i) deploy the methodology described in the Contractor's tender; and

(ii) deploy the personnel and resources described in the Contractor's tender.

Clause 7 Service of Notices

Clause 7 is amended by inserting a new paragraph after the second paragraph:

(a) A notice under this Contract must be:

(i) in writing, in English, by a person duly authorised by the sender; and

(ii) hand delivered, sent by pre-paid post, or if Annexure Part A provides that notices may be sent electronically, to the electronic address specified in Annexure Part A, or where notice in writing of a new address or electronic mail address has been given by one party to the other, then to any such new address.

(b) A notice given in accordance with Clause 7(a) takes effect when taken to be received (or at such later time specified in the notice). Subject to Clause 7(c), a notice is taken to be received:

(i) if delivered by hand, on the date it is delivered to the addressee;

(ii) if sent by pre-paid post, on the sixth Business Day after the date of posting;

(iii) if sent by electronic mail, when an acknowledgement that the mail has been successfully transmitted to the intended recipient is recorded on the sender's computer, but if the delivery receipt or transmission is not on a Business Day or is after 6.00pm on a Business Day, the notice is taken to be received at 8.00am the next Business Day.

(c) Without limiting anything else in this Clause, if the notice is a notice given under Clause 12.2, Clause 14.1, Clause 21.4, Clause 33.1, Clause 35.5, Clause 40.2, Clause 42, Clause 44.7, Clause 46 or Clause 47, and Annexure Part A provides that notices may be sent electronically, such notice must also be delivered by hand or post in addition to being delivered electronically and will be deemed to be received on the later of the relevant time periods set out in Clause 7(b).

A new Clause 7A is inserted as follows:

***7A Communications***

The parties agree to the following communication protocols:

(a) all communication must be made as provided for in the Contract;

(b) the communication must be in writing (or confirmed in writing as soon as practicable after the communication);

(c) the Superintendent must be copied into all communication under the Contract;

(d) if the Contractor has provided a communication in accordance with this Contract and the Superintendent or the Principal has not responded to the Contractor's communication, the Contractor may provide the Superintendent or the Principal with a secondary communication which includes a proposed period for response; and

(e) neither the Principal nor the Superintendent is required to respond to any communication provided by the Contractor before the time that the Principal or Superintendent could have reasonably anticipated that a response was required.

Nothing in this Clause 7A is intended to restrict or detract from the requirements under this Contract including the provision relating to notices in Clause 7.

Clause 8 Contract Documents

Clause 8.1 is amended by deleting the first sentence in paragraph 1 and replacing it with the following sentence:

The Contract Documents are to be interpreted in the order of precedence as set out in Annexure Part A.

**Clause 8.3 is amended by replacing the words "the Annexure" with "Annexure Part A".**

**Clause 8.4 is amended by replacing the words "the Annexure" with "Annexure Part A".**

**Clause 8.6 is amended by replacing the words "Final Certificate" in the second paragraph with "Final Payment Schedule"**

Clause 9 Assignment and Subcontracting

Clause 9.1 is deleted and replaced with the following:

The Contractor shall not, without the prior written approval of the Principal and except on such reasonable terms and conditions as are determined in writing by the Principal, assign the Contract or any payment or any other right, benefit or interest under the Contract.

The Principal may, without the consent of the Contractor, novate or assign the Contract or any payment or any other right, benefit or interest under the Contract to a State Entity. On any such assignment or novation the Contractor shall provide to the Principal all necessary assistance and do and execute all things as are deemed necessary or desirable by the Principal to effect such assignment or novation, including executing a deed of novation satisfactory to the Principal.

Clause 9.2 is deleted and replaced with the following new Clause 9.2:

For the purposes of this Clause 9.2:

"Secondary Subcontract" means a subcontract between the Subcontractor and a subcontractor to the Subcontractor (in this Clause called the "Secondary Subcontractor").

"Subcontract" means a contract between the Contractor and a third party whereby the third party (in this Clause called the "Subcontractor") agrees to perform work comprising part of the work under the Contract; and

"Subcontracting Commercial Principles" means the following principles:

(a) Subcontract conditions, as far as practicable, allocate risks to the party best able to manage the risk;

(b) Subcontract conditions must:

(i) be compatible with the conditions of this Contract;

(ii) not include ‘pay when paid’ or ‘pay if paid’ provisions;

(iii) in respect of the payment provisions:

(A) be consistent with and support the Subcontractor's ability to enjoy the benefits provided under the Building and Construction Industry Security of Payment Act 2002 (Vic); and

(B) in respect of the agreed timing thereunder, shall not subsequently be amended;

(c) the Subcontract complies with the unfair contract terms law as set out under the Australian Consumer Law;

(d) the Subcontract provides for fair entitlement to payment and prompt payment;

(e) the Subcontract provides for alternative dispute resolution;

(f) the Subcontract does not contain time bar provisions or provisions restraining the rights of the Subcontractor which are not necessary or convenient having regard to the provisions of this Contract; and

(g) the Subcontract must impose obligations on both the Contractor and the Subcontractor to comply with the Principal's Policies and Procedures the subject of this Contract; and

(h) where not addressed by any of the above principles, subcontract conditions and obligations shall, to the extent practicable, be substantially the same as the conditions and obligations set out in this Contract.

Where the subcontract sum for the particular work is greater than $50,000.00, the Contractor must ensure that the terms of the Subcontract are consistent with the Subcontracting Commercial Principles and do not contain any provisions which are contrary to the Subcontracting Commercial Principles other than those necessary to reflect the terms of this Contract.

The Contractor shall not without the written approval of the Superintendent, which approval shall not be unreasonably withheld, subcontract or allow a Subcontractor to assign or enter into a Secondary Subcontract for any of the work under the Contract where the amount payable under that contract exceeds the amount set out in Annexure Part A.

With a request for approval, the Contractor shall provide to the Superintendent:

(a) particulars in writing of the work to be subcontracted and the name and the address of the proposed Subcontractor or Secondary Subcontractor (as relevant);

(b) written confirmation, where the proposed subcontract sum for the particular work is greater than $50,000.00, that the proposed Subcontract or Secondary Subcontract conditions (as relevant) are consistent with the Subcontracting Commercial Principles and do not contain any provisions which are contrary to the Subcontracting Commercial Principles other than those necessary to reflect the terms of this Contract;

(c) a written warranty, the breach of which shall be deemed to be a substantial breach of contract for the purposes of Clause 44.2, that the Subcontract or the Secondary Subcontract (as relevant) will be entered into in accordance with the requirements of this Clause 9.2; and

(d) any other information which the Superintendent reasonably requests, including the proposed Subcontract or Secondary Subcontract documents (as relevant) without prices.

Within 14 days after a request by the Contractor for approval, the Superintendent shall advise the Contractor of approval or the reasons why approval is not given.

Approval may be conditional on the Subcontract or the Secondary Subcontract (as relevant) including:

(i) provision that the Subcontractor or Secondary Subcontractor (as relevant) shall not assign or enter into a further subcontract for any of the work under the Subcontract or Secondary Subcontract (as relevant) without the consent in writing of the Contractor; and

(ii) provisions which may be reasonably necessary to enable the Contractor to fulfil the Contractor's obligations to the Principal.

Clause 11 Provisional Sums

**Clause 11 is amended by replacing the words "the Annexure" in subparagraphs (b) and (c) with "Annexure Part A".**

Clause 13 Patents, Copyright and Other Intellectual Property Rights

Clause 13 is amended by inserting two new paragraphs after the second paragraph:

*The Contractor grants to the Principal an irrevocable, non-exclusive, perpetual, transferrable, royalty-free licence to use any documents or materials provided by the Contractor for the work under the Contract which shall include the right for the Principal to sub-licence such rights to a third party and any necessary Intellectual Property Rights. Such licence shall also include any subsequent repairs to, maintenance or servicing of (including the supply of replacement parts), or additions or alterations to, the Works.*

*The Contractor undertakes that it has obtained or will obtain valid consent from all relevant authors in the creation of any documents or materials provided by the Contractor for the work under the Contract so that the use by the Principal or its assignees of such material will not infringe any Intellectual Property Rights or any author's moral rights under the Copyright Act 1968 (Cth).*

Clause 14 Statutory Requirements

The heading is amended to read "Legislative Requirements and Principal's Policies and Procedures".

Clause 14.1 is amended by:

* **amending the heading to read "Compliance";**
* **deleting the first paragraph and replacing it as follows:**

The Contractor must:

(a) comply with all Legislative Requirements in relation to or in connection with the carrying out of the work under the Contract and the performance of its obligations under the Contract except:

(i) the required consents, permits and approvals which are specified in Annexure Part A; or

(ii) those which the Superintendent directs are to be satisfied by or on behalf of the Principal;

(b) comply with all Principal's Policies and Procedures in relation to or in connection with the carrying out of the work under the Contract and the performance of its obligations under the Contract;

(c) comply with all conditions and requirements in relation to any consents, permits and approvals relevant to the work under the Contract (whether or not the Contractor was required to obtain such consents, permits and approvals);

(d) undertake the work under the Contract and perform its obligations under the Contract in a manner which will not place the Principal in breach of any Legislative Requirement and which will support compliance by the Principal with all relevant Legislative Requirements; and

(e) when requested by the Principal, provide evidence, satisfactory to the Principal, of the Contractor’s compliance with this Clause and evidence that the Contractor has systems and protocols in place to support compliance with this Clause.

* **deleting the word "requirement" and replacing it with "Legislative Requirement" each time it is used in the remainder of the Clause.**

Clause 14.2 is deleted and replaced as follows:

*If a Legislative Requirement does not necessitate a variation under Clause 40 but is a change after the 28th day prior to the date of closing of tenders in a Legislative Requirement which necessitates a change in the Temporary Works or the Contractor's method of working and thereby causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.*

Clause 14.3 is amended by deleting the word "requirement" and replacing it with "Legislative Requirement" each time it is used.

A new Clause 14A is inserted as follows:

***14A GST***

***14A.1 Definition and interpretation***

(a) Words or expressions used in this Clause 14A which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) ('GST Act') have the same meaning in this Clause.

(b) In addition to the definition of 'GST' in the GST Act, any reference to 'GST' also includes any voluntary or notional GST equivalent payments a party is obliged to make under or in relation to the National Tax Reform (Consequential Provisions) Act 2000 (Vic) or any successor legislation or equivalent legislation in another state ('NTR Act').

(c) 'Recipient' means the party acquiring the relevant supply.

(d) 'Supplier' means the party making the relevant supply.

***14A.2 GST Gross-up***

If the Supplier makes a supply under or in connection with this Contract on which GST is imposed, in whole or in part (not being a supply the consideration for which is specifically described in this Contract as inclusive of GST) then:

(a) the consideration payable or to be provided for that supply under this Contract but for the application of this Clause ('GST exclusive consideration') is increased by, and the Recipient of the supply must also pay to the Supplier, an amount equal to the GST payable on the supply ('GST Amount'); and

(b) the GST Amount must be paid to the Supplier by the Recipient without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided, subject to the Supplier giving the Recipient a tax invoice in respect of that taxable supply.

***14A.3 Payments and Reimbursements***

(a) If a payment to a party under this Contract is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party, or the representative member of a GST group of which that party is a member, is entitled for that loss, cost or expense.

(b) If a payment is calculated by reference to, or as a specified percentage of, another amount or revenue stream, that payment shall be calculated by reference to, or as a specified percentage of, the amount or revenue stream exclusive of GST.

***14A.4 Adjustments***

If an adjustment event arises in respect of a supply made under or in connection with this Contract, then:

(a) the Supplier must issue an adjustment note to the Recipient within 7 days of the adjustment event occurring or otherwise as soon as it becomes aware of the adjustment event, outlining the revised amount of GST payable in respect of that supply ('Corrected GST Amount');

(b) if the Corrected GST Amount is less than the previously attributed GST Amount, the Supplier shall refund the difference to the Recipient within 15 days of the adjustment note being issued by the Supplier; and

(c) if the Corrected GST Amount is greater than the previously attributed GST Amount, the Recipient shall pay the difference to the Supplier within 15 days of the adjustment note being issued by the Supplier.

Clause 16 Care of the Work and Reinstatement of Damage

Clause 16.1 is amended by replacing the words "payment certificate" in the second paragraph with "payment schedule".

Clause 16.3 is amended by deleting subparagraph (e).

Clause 18 Insurance of the Work Under the Contract

Clause 18 is amended by:

* replacing the words "the Annexure" in subparagraphs (ii), (iii), (iv) and (v) with "Annexure Part A";
* inserting the words "Option A" before the final paragraph of "Alternative 1" (that is the paragraph beginning with the words "The insurance policy shall be in the joint names…"); and
* **inserting a new paragraph before "Alternative 2" as follows:**

*Option B*

*The insurance policy shall cover the Principal, the Contractor and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights, interests and liabilities and, unless otherwise specified elsewhere in the Contract, shall extend to cover the Principal as an insured party, and shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Contractor ceases to be responsible under Clause 16.1 for the care of anything.*

Clause 19 Public Liability Insurance

Clause 19 is amended by:

* **replacing the words "the Annexure" in the second paragraph with "Annexure Part A";**
* inserting the words ' – Option A' after the words 'Alternative 1'; and
* inserting a new paragraph before 'Alternative 2' as follows:

*Alternative 1 – Option B*

*Before the Contractor commences work, the Contractor shall take out a public liability policy of insurance covers the Principal, the Contractor, the Superintendent and all subcontractors employed from time to time in relation to the work under the Contract for their respective rights and interests and covers their liabilities to third parties and extends to cover the Principal as an insured party. The policy shall also cover the Contractor's liability to the Principal and Principal's liability to the Contractor for loss of or damage to property (other than property required to be insured by Clause 18) and the death of or injury to any person (other than liability which is required by law to be insured under a workers compensation policy of insurance).*

*The public liability policy of insurance shall be for an amount in respect of any one occurrence not less than the sum stated in Annexure Part A and, unless otherwise specified elsewhere in the Contract, shall be effected with an insurer and in terms both approved in writing by the Principal which approvals shall not be unreasonably withheld. The policy shall be maintained until the Final Payment Schedule is issued under Clause 42.8.*

Clause 21 Inspection and Provisions of Insurance Policies

Clause 21.3 is amended as follows:

* **deleting the words "shall ensure that each policy of insurance contains provisions acceptable to the other party that" in the first paragraph;**
* **deleting the words "require the insurer" and the word "to" in paragraph (a);**
* **inserting the words "where practicable" at the commencement of paragraph (b);**
* **inserting the words ", and where this is not practicable the party effecting insurance will, when requested by the Principal, the Superintendent, the Contractor or a subcontractor, promptly give notice of claim to the insurer" at the end of paragraph (b); and**
* **deleting and replacing paragraph (c) with the following:**

(c) if that party fails to renew the policy or to pay a premium, to give notice in writing thereof forthwith to the Principal, the Superintendent, the Contractor and all subcontractors.

**Clause 21.6 is amended by inserting the words ", which extends cover to more than one party," after the words "in joint names".**

Clause 23 Superintendent

Clause 23 is amended by:

* **deleting, in subparagraph (a), the words “and fairly”;**
* **adding the following new paragraph after existing paragraph 1:**

The Principal shall also ensure that in the exercise of the functions of the Superintendent under Clauses 5.7, 6.2, 8.1, 21.5, and Clauses 35, 40 and 42 of the Contract, the Superintendent acts fairly;

* **deleting, in the existing paragraph 2 (that is the paragraph beginning with the words “If, pursuant to a provision…”), the words “enabling the Superintendent to give directions”; and**
* **inserting the following new paragraph after existing paragraph 5 (that is the paragraph beginning with the words “If the Contractor in writing requests…”):**

If the Contractor considers that a direction may give rise to a claim by the Contractor against the Principal, it must, as a condition precedent to any entitlement, give the Superintendent notice of that claim. The notice must be given within 2 Business Days of the direction and in any event before commencing any work under the Contract the subject of the direction. The notice must set out the general nature of the potential claim and the Contractor's reasonable estimate of the value of the claim. On receipt of this advice from the Contractor, the Superintendent may confirm or revoke the direction. If the Superintendent confirms the direction, the Contractor's entitlement to relief will be determined in accordance with the Contract.

Clause 27 Site

Clause 27.1 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 29 Materials, Labour and Constructional Plant

Clause 29.1 is deleted and replaced by the following:

Except to the extent that the Contract otherwise provides:

(a) the Contractor shall supply everything necessary for the proper performance of the Contractor's obligations and discharge of the Contractor's liabilities under the Contract; and

(b) incidental items not expressly mentioned in the Contract but which are necessary for the satisfactory completion and performance of the work under the Contract shall be supplied and executed by the Contractor without adjustment to the Contract Sum.

Clause 29 is amended by adding the following new Clause:

***29.4 Warranties***

Where the Contract requires, the Contractor must procure from the relevant subcontractors and suppliers warranties, in the name of the Principal, to the effect stated in the Contract. Such warranties shall be in a form approved by the Superintendent and shall be submitted to the Superintendent (and be in a form exercisable for the benefit of the Principal) prior to the issue of the Final Payment Schedule.

To the extent that the Contractor, in breach of this Clause, does not procure warranties, in the name of the Principal, to the effect stated in the Contract, or in respect of work carried out by subcontractors or materials supplied by suppliers where the Contractor is not obliged to procure such warranties, the Contractor hereby assigns to the Principal all its right, title and interest in the Contractor’s rights against all subcontractors and suppliers in relation to the work under the Contract.

To the extent that the assignment sought to be effected by the preceding paragraph is not effective the Contractor holds the rights sought to be assigned on trust for the Principal and will exercise those rights as directed by the Principal.

Clause 30 Material and Work

**Clause 30.6 is amended by replacing in the first paragraph, the words "Final Certificate" with "Final Payment Schedule".**

Clause 31 Examination and Testing

**Clause 31.1 is amended by replacing in the second paragraph, the words "Final Certificate" with "Final Payment Schedule".**

Clause 33 Progress and Programming of the Works

Clause 33.2 is amended by deleting the existing paragraph 5 (that is, the paragraph beginning with the words "The Contractor shall not, without reasonable cause, depart…") and inserting the following paragraph after the first paragraph:

A construction program must be in the form and comply with any requirements specified in Annexure Part A and comply with any other requirements as the Superintendent, acting reasonably, may direct from time to time. A program that does not comply with these requirements shall not be regarded as a construction program for the purposes of the Contract.

Clause 35 Times for Commencement and Practical Completion

Clause 35 is amended by inserting a new Clause 35.2A after Clause 35.2 as follows:

***35.2A Time for Administrative Completion***

The Contractor shall achieve Administrative Completion by the Date for Administrative Completion.

Clause 35.3 is amended by:

* **deleting the word "and" from the end of paragraph (b) and inserting new paragraphs (d) to (f) after paragraph (c) as follows:**

(d) Date for Administrative Completion;

(e) Date of Administrative Completion; and

(f) Administrative Completion,

Clause 35.5 is amended by:

* deleting the words " including but not limited to" in subparagraph (a);
* replacing in subparagraph (ii) the words "the Annexure" with "Annexure Part A".
* **adding the following paragraph after the paragraph beginning with "Where more than one event causes concurrent delays...":**

Events will be regarded as causing concurrent delays if the delay caused by each individual event (on the basis that the particular individual event had been the only event causing delay), or any part of that delay, occurs at the same time (whether in full or in part) as the delay caused by another individual event (on the basis that the other individual event had been the only event causing delay).

* **adding the following paragraphs after the paragraph beginning with "whether the Contractor can, by committing extra resources...":**

In determining whether the Contractor is committing extra resources the baseline resources will be the greater of:

(c) the resources described in any documents provided by the Contractor to the Principal as part of a tender submitted by the Contractor,

(d) the resources depicted in or capable of inference from a construction program; and

(e) the resources which the Superintendent considers a reasonably competent contractor would have anticipated dedicating to the work under the Contract as at the Date of Acceptance of Tender.

In determining whether the Contractor is incurring extra expenditure no regard shall be had to the cost of the baseline resources.

* **adding the following paragraph after the paragraph beginning with "in determining a reasonable extension of time…":**

Notwithstanding that the Contractor is not entitled to or has not claimed an extension of time and any other clause in this Contract, the Superintendent may (in its absolute discretion) at any time and from time to time before the issue of the Final Payment Schedule by notice in writing to the Contractor extend the time for Practical Completion for any reason.

* **replacing the words "Final Certificate" with "Final Payment Schedule".**

Clause 35.6 is amended by replacing in the first paragraph the words "the Annexure" with "Annexure Part A".

Clause 35 is amended by inserting a new Clause 35.6A after Clause 35.6 as follows:

***35.6A Liquidated Damages for Delay in Reaching Administrative Completion***

If the Contractor fails to reach Administrative Completion by the Date for Administrative Completion, the Contractor shall be indebted to the Principal for liquidated damages at the rate stated in Annexure Part A for every day after the Date for Administrative Completion to and including the Date of Administrative Completion or the date that the Contract is terminated pursuant to Clause 44, whichever first occurs.

If after the Contractor has paid or the Principal has deducted liquidated damages, the time for Administrative Completion is extended, the Principal shall forthwith repay to the Contractor any liquidated damages paid or deducted in respect of the period to and including the new Date for Administrative Completion.

Clause 35.7 is amended by:

* **inserting in the first paragraph the word "total" before the word "liability";**
* **inserting in the first paragraph the words "and Clause 35.6A" after the words "Clause 35.6";**
* **replacing in the first paragraph the words "the Annexure" with "Annexure Part A"; and**
* **adding the following paragraph:**

*The Contractor agrees that should it fail to reach Practical Completion by the Date for Practical Completion and Administrative Completion by the Date for Administrative Completion, the Principal is entitled to receive liquidated damages for both breaches. For any concurrent failure to reach both milestones, the Principal will only be entitled to the greater of the two rates of liquidated damages.*

**Clause 35.8 is amended by replacing the words "the Annexure" with "Annexure Part A".**

Clause 36 Delay or Disruption Costs

Clause 36 is amended by:

* **adding the words “***For the purposes of this clause 36, an event referred to in clause 35.5(b)(i) shall be an event which relates solely to the Contract”.*
* **adding the words "or Clause 35.5(b)(x)" after the words "Clause 35.5(b)(i)";**
* **relacing in the second paragraph the words "the Annexure" with "Annexure Part A";**
* **adding the following paragraphs at the end of Clause 36:**

The entitlement of the Contractor under this Clause 36 and the entitlement in respect of extra costs for delay or disruption included in the value of a variation is the Contractor's full entitlement in respect of delay, disruption, prolongation and the like (whether the delay, disruption, prolongation or the like is caused by a breach of contract or otherwise) and the Principal shall not have any liability to the Contractor in excess of that entitlement.

Except as stated, the Contractor has no claim of any kind whatsoever for delay or disruption arising out of the work under the Contract;

* **replacing "; or" with "." in paragraph (a); and**
* **deleting paragraph (b).**

Clause 37 Defects Liability

Clause 37 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 40 Variations

Clause 40.1 is amended by deleting the final paragraph, and replacing it as follows:

If the variation directed by the Superintendent is to decrease or omit any part of the work under the Contract, the Principal (acting reasonably) shall be entitled to bring forward the Date for Practical Completion and the Date for Administrative Completion.

The Principal may elect to carry out work that is omitted from the work under the Contract or have that work carried out by other contractors.

The Superintendent may direct a variation, or direct the Contractor as contemplated by Clause 30.3 and Clause 30.5, at any time prior to the issue of the Final Payment Schedule under Clause 42.8. Such a direction will not have the effect of setting time at large or otherwise relieving the Contractor from the obligation to reach Practical Completion by the Date for Practical Completion or Administrative Completion by the Date for Administrative Completion.

Clause 41 Daywork

Clause 41 is amended by replacing in subparagraph (f) the words "the Annexure" with "Annexure Part A".

Clause 42 Certificates and Payment

Clause 42.1 is amended by:

* replacing in the existing second paragraph (that is, the paragraph beginning with the words "within 14 days after receipt") the words "14 days" with "10 Business Days";
* replacing in the existing fourth paragraph (that is, the paragraph beginning with the words " Subject to the provisions of the Contract, within 28 days") the words “14 days” with “10 Business Days”; and "28 days" with "20 Business Days";
* **replacing the words "the Annexure" with "Annexure Part A", “payment certificate” with “payment schedule”, “final certificate” with “Final Payment Schedule” and "claim for payment" with "payment claim"; and**
* **inserting the following paragraphs after the existing final paragraph:**

A payment claim must:

(c) be in the form of Annexure Part H;

(d) include a tax invoice (within the meaning of the GST Act);

(e) set out:

(i) the Contractor’s Australian Business Number;

(ii) the amount claimed by the Contractor and the basis for calculation of that amount;

(iii) the amount of any GST paid or payable by the Contractor with respect to the amount claimed;

(iv) the Contractor’s address for payment;

(v) the Principal’s Reference number;

(vi) the details of any claim arising under Clause 12 or otherwise in respect of a Latent Condition;

(vii) the details of any claim arising under Clause 14.1 or otherwise in respect of the consequences of a change in a Legislative Requirement as described in Clause 14;

(viii) the details of any claim arising under Clause 36 or otherwise in respect of extra costs incurred by reason of delay; and

(ix) the details of any claim capable of being valued under Clause 40.5(f) or otherwise in respect of delay or disruption or loss of productivity;

(f) in respect of each aspect of the claim that is made other than in relation to the work under the Contract :

(i) separately set out details of each such claim;

(ii) refer to each such claim with a unique numerical identifier with the identifiers being consecutive and commencing with the number 1;

(iii) describe the factual circumstances giving rise to the claim; and

(iv) identify the clause or clauses of the Contract relied on, or, in the absence of reliance on the Contract, the other legal basis relied on in support of the claim.

If a payment claim does not include a tax invoice and the details described above then the claim is not, for the purpose of this Clause, a payment claim. The date of receipt of a payment claim is taken to be the later of the date of the receipt of the claim or the date of receipt of the tax invoice or the date of receipt of the last of the details described above.

Clause 42.1A is inserted after Clause 42.1:

***42.1A Conditions Precedent***

For the purpose of determining when a time for submitting a payment claim arises under this Contract and a ‘reference date’ arises under the Building and Construction Industry Security of Payment Act 2002 (Vic), neither a time for submitting a payment claim or a ‘reference date’ arises unless the Contractor:

(a) has provided the Principal with security for the amount (if any) required under Clause 5;

(b) has executed the formal instrument of agreement in accordance with Clause 6:

(c) has effected the insurance required by the Contract and (if requested) provided evidence of this to the Superintendent;

(d) has complied with its obligations in relation to health and safety in accordance with Clause 55 or Clause 56 (as applicable); or

(e) has complied with any other obligation stated in the Contract Documents to be a condition precedent to submitting a payment claim.

Clause 42.2 is amended by replacing the words "Final Certificate" with "Final Payment Schedule".

Clause 42.3 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 42.5 is amended by replacing the words "14 days" with "10 Business Days".

Clause 42.5A is inserted after Clause 42.5:

***42.5A   Conditional Practical Completion***

Where the Contractor has given notice of anticipated Practical Completion in accordance with Clause 42.5, the Superintendent may, in its absolute discretion, issue a Conditional Certificate of Practical Completion. A Conditional Certificate of Practical Completion may have a defects list attached to it. The defects list may identify:

(a) items which are defects;

(b) any work which is incomplete; and

(c) defects which are characterised by the Superintendent as priority defects.

The Contractor must rectify or complete all items listed in the defects list either:

(d) by the date nominated by the Superintendent (either in the list or subsequent to the issuing of the list); or

(e) in the absence of the Superintendent nominating a date, as soon as practicable (which, in respect of a priority defect, must, in any event, be no later than 30 days after the date of the list).

If the Superintendent issues a Conditional Certificate of Practical Completion the Superintendent may certify:

(f) an amount of security which the Principal is entitled to hold from the amount of security which would otherwise be released upon or after Practical Completion, with such security being held until the expiration of 14 days after the date on which the last of the items listed on the defects list is completed; and

(g) an amount of liquidated damages which continues to accrue until commencement of the Defects Liability Period.

When the Superintendent is of the opinion that Practical Completion has been reached and each of the matters in the Conditional Certificate of Practical Completion have been addressed, the Superintendent may issue a Certificate of Practical Completion, whether or not the Contractor has made a request for its issue.

***42.5B Certificate of Administrative Completion***

When the Contractor is of the opinion that Administrative Completion has been reached, the Contractor shall in writing request the Superintendent to issue a Certificate of Administrative Completion.

Within 10 Business Days of the receipt of the request, the Superintendent shall give to the Contractor and to the Principal a Certificate of Administrative Completion certifying the Date of Administrative Completion or give the Contractor in writing the reasons for not issuing the certificate.

When the Superintendent is of the opinion that Administrative Completion has been reached, the Superintendent may issue a Certificate of Administrative Completion, whether or not the Contractor has made a request for its issue.

Clause 42.6 is amended by:

* **replacing the words in the heading “Effect of Certificates” with “Effect of Payment Schedules*”*;**
* **replacing the words “payment certificate” with “payment schedule”; and**
* **inserting the words ", a Conditional Certificate of Practical Completion or a Certificate of Administrative Completion" before the words "shall not".**

Clause 42.7 is amended by:

* **replacing the words "28 days" with "20 Business Days"; and**
* **inserting, in the second paragraph, the words "or in connection with” after the words "under or arising out of".**

Clause 42.8 is amended by:

* **replacing, in paragraph 1, the words "arising out of" with the words "under or arising out of or in connection with”;**
* **replacing the words "Final Certificate” with "Final Payment Schedule";**
* **replacing the words "14 days" with "10 business days"; and**
* **deleting the words "that the Works have been completed in accordance with the terms of the Contract and" from the second paragraph.**

Clause 42.9 is amended by:

* **replacing the words "the Annexure" with "Annexure Part A"; and**
* **replacing the words "18 per cent per annum" with the words "the amount of interest at the rate set by the Attorney General under the Penalty Interest Rate Act 1983".**

Clause 43 Payment of Workers and Subcontractors

Clause 43 is amended by replacing the words “claim for payment” with “payment claim” and "5 days" with "5 Business Days".

Clause 44 Default or Insolvency

Clause 44.2 is amended by deleting, in paragraph 1, the words "and the Principal considers that damages may not be an adequate remedy".

Clause 44.7 is amended by replacing the words "the Annexure" with "Annexure Part A".

Clause 44.10 is amended by adding the following new paragraph to the end of the Clause:

If the Contract is wrongfully terminated pursuant to Clause 44.9 the Contractor shall only be entitled to recover damages in respect of the wrongful termination of the Contract and shall not be entitled to claim on a quantum meruit or by reason of unjust enrichment.

Clause 44.11 is replaced with the following new Clause:

If:

(a) a party informs the other party in writing or creditors generally that the party is insolvent or is financially unable to proceed with the Contract;

(b) execution is levied against a party by a creditor;

(c) a party is an individual person or a partnership including an individual person, and if that person:

(i) commits an act of bankruptcy;

(ii) has a bankruptcy petition presented against him or her or presents his or her own petition;

(iii) is made bankrupt;

(iv) makes a proposal for a scheme of arrangement or a composition; or

(v) has a deed of assignment or deed of arrangement made, accepts a composition, is required to present a debtor's petition, or has a sequestration Order made, under Part X of the Bankruptcy Act 1966 (Cth); or

(d) in relation to a party being a corporation:

(i) notice is given of a meeting of creditors with a view to the corporation entering a deed of company arrangement;

(ii) the party enters a deed of company arrangement with creditors;

(iii) a controller or administrator is appointed;

(iv) an application is made to a court for the winding up of the party and not stayed within 14 days;

(v) a winding up order is made in respect of the party;

(vi) it resolves by special resolution that it be wound up voluntarily (other than for a members' voluntary winding-up); or

(vii) a mortgagee of any property of the party takes possession of that property,

then, where the other party is:

(e) the Principal, the Principal may, without giving a notice to show cause, exercise the right under Clause 44.4(a) or Clause 44.4(b); or

(f) the Contractor, the Contractor may, without giving a notice to show cause, exercise the right under Clause 44.9.

The rights given by this Clause 44.11 are in addition to any other rights and may be exercised notwithstanding that there has been no breach of contract.

Clause 46 Time for Notification of Claims

**Clause 46.1 is amended by:**

* **deleting the paragraph 1 and replacing it with:**

*The Principal shall not be liable for any claim by the Contractor in respect of or arising out of a breach of the Contract or arising out of or related to the Works (including claims in tort, for a quantum meruit or pursuant to statute) unless within 20 Business Days after the first day on which a competent and experienced contractor could reasonably have been aware of the circumstances which might give rise to any such claim, the Contractor has given to the Principal and to the Superintendent the prescribed notice.*

* **deleting the then second paragraph; and**
* **replacing the words "claim for payment" with "payment claim".**

**Clause 46.2 is amended by replacing the words "56 days" with "40 Business Days".**

Clause 47 Dispute Resolution

Clause 47.2 is deleted and replaced with the following new Clause:

Alternative 1

Within 10 Business Days of service of a notice of dispute (or such longer period of time as may be agreed by the parties to the dispute), the parties shall confer at least once to attempt to resolve the dispute in good faith. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. If after that 10 Business Day period the dispute remains unresolved, then the parties shall proceed to mediation in accordance with Clause 47.2A.

If the dispute has not been resolved at the mediation contemplated by Clause 47.2A or the mediation process is terminated in accordance with Clause 47.2A, then either party may refer the dispute to arbitration (unless otherwise unavailable at law, in which case the dispute may be referred to litigation).

Alternative 2

A party served with a notice of dispute may give a written response to the notice to the other party and the Superintendent within 20 Business Days of the receipt of the notice.

Within 30 Business Days of service on the Superintendent of a notice of dispute or within 10 Business Days of the receipt by the Superintendent of the written response, whichever is the earlier, the Superintendent shall give to each party the Superintendent’s written decision on the dispute, together with reasons for the decision.

If either party is dissatisfied with the decision of the Superintendent or if the Superintendent fails to give a written decision on the dispute within the time required under this Clause 47.2, the parties shall, within 10 Business Days of the date of receipt of the decision or within 10 Business Days of the date upon which the decision should have been given by the Superintendent, confer at least once to attempt to resolve the dispute in good faith. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the dispute. If after that 10 Business Day period the dispute remains unresolved, then the parties shall proceed to mediation in accordance with Clause 47.2A.

If the dispute has not been resolved at the mediation contemplated by Clause 47.2A or the mediation process is terminated in accordance with Clause 47.2A, then either party may refer the dispute to arbitration (unless otherwise unavailable at law, in which case the dispute may be referred to litigation).

Clause 47.2A is inserted after Clause 47.2:

***47.2A Resolution of Disputes - Mediation***

Where a dispute is to proceed to mediation the following provisions shall apply to that mediation.

The mediator shall be a mediator agreed on by the parties or if the parties are unable to agree on a mediator within 5 Business Days, a mediator nominated by the then current Chairman of the Resolution Institute, Victorian Chapter or the Chairman’s nominee.

The mediation must be convened within 20 Business Days of the appointment of the mediator.

Each party agrees to participate in any mediation in good faith and use its best efforts to resolve the dispute.

The role of any mediator is to assist in negotiating a resolution of the dispute. Any information or documents disclosed by a party under this Clause must, unless and until that information or those documents come into the possession of that party through legitimate means other than the mediation:

(a) be kept confidential; and

(b) not be used except to attempt to resolve the dispute.

Each party must bear its own costs of complying with this Clause and the parties must bear equally the costs of any mediator engaged.

After the expiration of 20 Business Days from the appointment of the mediator (or other period as agreed between the parties), a party that has complied with this Clause may terminate the mediation process by giving notice to the other party.

Clause 47.3 is amended by:

* **inserting the words "Unless otherwise unavailable at law," at the beginning of the existing first sentence;**
* **replacing the words "the Annexure" with "Annexure Part A" and**
* **replacing the words "Institute of Arbitrators Australia" with "Resolution Institute".**

New Clause 49 Severability

The following new Clause 49 is added to the General Conditions:

***49 Severability***

The parties agree that a construction of this Contract that results in all provisions being enforceable is to be preferred to a construction that does not so result.

If, despite the application of this Clause, a provision of this Contract is illegal or unenforceable:

(a) if the provision would not be illegal or unenforceable if a word or words were omitted, that word or words are severed; and

(b) in any other case, the whole provision is severed,

and the remainder of this Contract continues in force.

New Clause 50 Disclosure of Information

The following new Clause 50 is added to the General Conditions:

***50 Disclosure of Information***

***50.1 Disclosure of Tender Information***

The Contractor, under the conditions forming part of the tender has consented to the party requesting the tender, publishing (on the Internet or otherwise) the name of the Contractor and the Contract Sum together with conditions of this Contract generally. Subject to this right of publication the party requesting the tender will treat as confidential all information provided to it in the tender.

***50.2 Public Disclosure and Freedom of Information***

(a) In this Clause 50.2, except where the context otherwise requires:

'Freedom of Information Legislation' means the Freedom of Information Act 1982 (Vic).

'Public Disclosure Requirements' means the disclosure of information in relation to the Contract or the work under the Contract where that disclosure is required by the Freedom of Information Legislation, mandatory by reason of the Principal being a public entity, where disclosure is prudent or desirable in order to facilitate and support transparent open governance, or where a Minister of the Crown (or a representative of a Minister of the Crown) is required to or considers it prudent or desirable to disclose the information.

(b) The Principal, or a representative or nominee of the Principal, may disclose any information (including any confidential information) if such disclosure is required by or is consistent with the Public Disclosure Requirements.

(c) Any obligations of confidence which one party has to the other under the Contract or by reason of the entering into of the Contract or the performance of the Contract shall be subject to the right of the Principal under this Clause 50.2.

(d) This Clause 50.2 survives the termination or expiration of the Contract.

New Clause 51 Auditing

The following new Clause 51 is added to the General Conditions:

***51 Auditing***

***51.1 Audit of and Other Access to Contractor’s Records***

The Contractor shall permit an accountant or auditor on behalf of the Principal from time to time during ordinary business hours and on reasonable notice, to inspect and verify all records maintained by the Contractor for the purposes of this Contract and the Contractor, its servants, agents and subcontractors shall give all reasonable assistance to any person authorised to undertake such audit or inspection. Any information provided or to which an accountant or auditor has access under this Clause shall be treated as confidential information and shall not be used other than for the purposes of this Contract or disclosed other than as required to comply with the written request of the Auditor General for Victoria.

The confidentiality obligations of the parties shall not extend to:

(a) Information already in the public domain other than due to a breach of this Contract;

(b) any disclosure required by law.

***51.2 Public Audit***

(a) In this Clause 51.2, except where the context otherwise requires:

'Public Audit' means any audit, investigation or enquiry conducted by a Public Auditor or pursuant to any Public Audit Legislation.

'Public Audit Legislation' means Section 94A of the Constitution Act 1975 (Vic) and the Audit Act 1994 (Vic) or any other applicable legislation.

'Public Auditor' means any auditor or officer appointed under any Public Audit Legislation or any authorised nominee or representative of such auditor or officer.

(b) The Contractor must, at its cost and without any additional entitlement under this Contract:

(i) permit a Public Audit required by any Public Auditor;

(ii) procure that the Contractor's subcontractors and agents permit a Public Audit required by any Public Auditor;

(iii) must comply with the requirements or requests of, and cooperate with any Public Auditor during the conduct of a Public Audit;

(iv) procure that the Contractor's subcontractors and agents comply with the requirements or requests of, and cooperate with any Public Auditor during, the conduct of a Public Audit; and

(v) provide to the Public Auditor reasonable working accommodation and associated facilities and services required by the Public Auditor for the purposes of undertaking a Public Audit.

(c) Any obligations of confidence which one party has to the other under the Contract or by reason of the entering into of the Contract or the performance of the Contract shall be subject to the obligations, duties, rights and entitlements of the parties in relation to any Public Audit.

(d) This Clause 51.2 survives the termination or expiration of the Contract.

New Clause 52 VIPP

The following new Clause 52 is added to the General Conditions:

***52 Victorian Industry Participation Policy***

*This Clause applies if indicated in Annexure Part A.*

***52.1 Definitions and Interpretation***

In this Clause 52, the following terms have the following meanings:

'Completion Date' means the Date for Practical Completion.

'Contestable Items' means goods or services the subject of the Contract for which there are competitive international suppliers and Australia and New Zealand suppliers. The Contestable Items are set out in Attachment 3 to Annexure Part D.

'Industry Capability Network (ICN)' means Industry Capability Network (ICN) Victoria (ICN) of Level 11, 10 Queens Road Melbourne Vic, 3004 (ACN 007 058 120) (ABN 20 007 058 120).

'Notice' means a notice given in accordance with Clause 7.

'Responsible Minister' means the Minister with responsibility for administering the Victorian Industry Participation Policy Act 2003.

'VIPP' means the Victorian Industry Participation Policy made pursuant to section 4 of the Victorian Industry Participation Policy Act 2003.

'VIPP Monitoring Table' means the table included at Attachment 2 of Annexure Part D.

'VIPP Plan' means the VIPP Plan set out in Attachment 1 of Annexure Part D.

***52.2 Local Jobs First - Victorian Industry Participation Policy***

*Plan*

(a) The Contractor must, in performing its obligations under the Contract, comply with the VIPP Plan.

(b) The Contractor acknowledges and agrees that its obligations as set out in the VIPP Plan apply from the commencement of the Works until the later of the Date of Practical Completion and the date upon which the Contractor fulfils all of its Reporting obligations as set out in Clause 52.3.

Revised VIPP Plan

(c) If at any time a variation to the Contract is proposed which involves or effects a change in the nature of any Contestable Items, the Contractor must prepare a revised VIPP Plan which must be certified by ICN (Revised VIPP Plan).

(d) When requested by the Superintendent, the Contractor must provide the Revised VIPP Plan within the time stated in the Superintendent's request.

(e) The Revised VIPP Plan must be agreed by the parties before any variation to the Contract can take effect unless the parties agree that a Revised VIPP Plan is unnecessary.

(f) Once the Revised VIPP Plan is agreed by the parties, the Revised VIPP Plan replaces the VIPP Plan in Attachment 1 of Annexure Part D and forms part of the Contract.

***52.3 Reporting***

(a) The Contractor must prepare and maintain records in the form of the VIPP Monitoring Table demonstrating its compliance with the VIPP Plan.

(b) The Contractor must report when requested by the Principal demonstrating its progress towards implementing the VIPP Plan. The Contractor may comply with its reporting obligation by submitting a report in the form of the VIPP Monitoring Table.

(c) Upon Practical Completion or within one month of the Date of Practical Completion (whichever occurs first), the Contractor must provide to the Superintendent:

(i) the VIPP Monitoring Table in the form set out in Attachment 2 to Annexure Part D detailing the Contractor's aggregate compliance with the VIPP Plan. The VIPP Monitoring Table must identify and explain any departures from the VIPP Plan and the aggregated outcomes as reported in the VIPP Monitoring Table; and

(ii) a Statutory Declaration in the form set out in Attachment 4 to Annexure Part D to confirm that the information contained in the VIPP Monitoring Table is true and accurate. The Statutory Declaration must be made by a director of the Contractor or the Contractor's Chief Executive Officer or Chief Financial Officer.

(d) At the request of the Superintendent, the Contractor must provide further information or explanation of any departures from the VIPP Plan as reported in the VIPP Monitoring Table.

(e) The reporting obligations are in addition to and do not derogate from any other reporting obligations as set out in the Contract.

***52.4 Verification of Supplier's compliance with VIPP Plan***

(a) The Contractor must:

(i) permit the Superintendent, the Principal, an accountant or auditor on behalf of the Principal, or any other person authorised by the Principal, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Principal's expense of all records maintained by the Contractor for the purposes of the Contract in connection with the VIPP Plan;

(ii) permit the Superintendent, the Principal, or the Principal's duly authorised representative from time to time to undertake a review of the Contractor's performance in accordance with the VIPP Plan; and

(iii) ensure that its employees, agents and subcontractors give all reasonable assistance to the Superintendent, the Principal or any person authorised by the Principal to undertake such audit or inspection.

(b) The Contractor acknowledges and agrees that the Superintendent, Principal, the Principal's duly authorised representative and ICN are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor compliance with the VIPP Plan.

(c) The obligations set out in this Clause 52.4 are in addition to and do not derogate from any other obligation under the Contract.

***52.5 Use of VIPP information***

The Contractor acknowledges and agrees that:

(a) ICN will assess the Contractor's performance against the VIPP Plan;

(b) the statistical information contained in the VIPP Plan and the measures of the Contractor's compliance with the VIPP Plan as reported in the VIPP Monitoring Table will be:

(i) included in the Principal's report of operations under Part 7 of the Financial Management Act 1994 in respect of the Principal's compliance with the VIPP in the financial year to which the report of operations relates;

(ii) provided to the Responsible Minister for inclusion in the Responsible Minister's report to the Parliament for each financial year on the implementation of the VIPP during that year; and

may be:

(iii) disclosed in the circumstances set out in Clause 52.5 or as otherwise required by law.

New Clause 53 Privacy

The following new Clause 53 is added to the General Conditions:

***53 Information Privacy***

***53.1 Definitions***

(a) “Code of Practice” means a code of practice as defined in, and approved under, the Privacy and Data Protection Act 2014 (Vic);

(b) “Information Privacy Principles” means the principles so identified and set out in the Privacy and Data Protection Act 2014 (Vic); and

(c) “Personal Information” means information or an opinion (including information or an opinion forming part of a database) that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

***53.2 Use of Personal Information***

The Contractor agrees in respect of Personal Information held in connection with this Agreement:

(a) that it shall be bound by the Information Privacy Principles and any applicable Code of Practice with respect to any act done or practice engaged in by the Contractor for the purposes of this Agreement, in the same way and to the same extent as the Principal would have been bound by the Information Privacy Principles and any applicable Code of Practice in respect of that act or practice had it been directly done or engaged in by the Principal; and

(b) to immediately notify the Principal where it becomes aware of a breach of Clause 53.2(a) by it or any of its agents or employees;

***53.3 Continuing Effect***

This Clause 53 shall continue to have effect after the termination or expiration of this Agreement.

New Clause 54 Security of Payment

The following new Clause 54 is added to the General Conditions:

***54 Security of Payment Act***

***54.1*** ***Application of the Security of Payment Act***

(a) 'Security of Payment Act' means the Building and Construction Industry Security of Payment Act 2002 (Vic) as amended from time to time.

(b) This Clause shall apply if the Security of Payment Act applies.

***54.2*** ***Service of Notices under the Security of Payment Act***

The Contractor shall:

(a) ensure that a copy of any written communication it delivers or arranges to deliver to the Principal of whatever nature in relation to the Security of Payment Act (including, without limitation, a payment claim under the Security of Payment Act), is provided to the Superintendent at the same time; and

(b) when the Contractor becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, promptly and without delay give the Superintendent a copy of any written communication of whatever nature in relation to the Security of Payment Act which the Contractor receives from a subcontractor.

***54.3 The Role of the Superintendent under the Security of Payment Act***

In receiving payment claims or issuing payment schedules pursuant to the Security of Payment Act, the Superintendent acts as the agent of the Principal.

***54.4 Payment Claim***

(a) A payment claim for the purposes of the Security of Payment Act is a valid payment claim pursuant to Clause 42.1.

(b) The date prescribed in Clause 42.1 as the time for payment claims is, for the purpose of the Security of Payment Act, the 'reference date'.

***54.5 Payment Schedule***

(a) The amount (if any) set out in a payment schedule as the amount of payment which the Principal proposes to make to the Contractor is, for the purposes of section 9, 10, 11 and 12 of the Security of Payment Act, the amount of the 'progress payment' (as defined in the Security of Payment Act) calculated in accordance with the Contract which the Contractor is entitled to be paid under the Contract.

(b) Failure by the Superintendent to set out in a payment schedule an amount which the Principal is entitled to retain, deduct, withhold or set-off (whether under this Contract or otherwise) from the amount which would otherwise be payable to the Contractor by the Principal will not prejudice the Principal's right to subsequently exercise that right to retain, deduct, withhold or set-off any amount.

***54.6 Method of Resolving Disputes Regarding Second Class of Variation.***

The Principal and Contractor agree that Clause 47 is a method for resolving disputes for the purposes of section 10A(3)(d) of the Security of Payment Act.

***54.7 Authorised Nominating Authority***

In the event of an adjudication application under the Security of Payment Act, the Contractor must make an adjudication application to one of the authorised nominating authorities referred to in Annexure Part A.

***54.8 Conduct of Adjudication***

In dealing with any adjudication application made by the Contractor under the Security of Payment Act, the Adjudicator shall:

(a) have no power to open up, review or revise any certificate issued under the Contract by the Superintendent;

(b) at all times act impartially between the parties, in accordance with the laws; and

(c) include in the determination the reasons for the determination and the basis on which any amount or date has been decided.

***54.9*** ***Suspension of Works under the Security of Payment Act***

If the Contractor suspends the whole or part of the work under the Contract pursuant to the Security of Payment Act:

1. the suspension shall not of itself affect the Date for Practical Completion but may be a ground for an extension of time under Clause 35.5;
2. the Principal shall not be liable for any costs, expenses, damages, losses or other liability including delay or disruption costs whatsoever suffered or incurred by the Contractor as a result of the suspension other than loss or expenses as a result of the removal by the Principal, from the Contract, of part of the work or supply;
3. the Contractor must continue to comply with its obligations in relation to all Legislative Requirements as referred to in Clause 14;
4. the Contractor must hold itself available to return to work as soon as practicable after the right, under the Security of Payment Act, to suspend the carrying out of the work under the Contract, no longer exists;
5. the Contractor must do all things reasonably practicable to return to work as soon as practicable after the right, under the Security of Payment Act, to suspend the carrying out of the work under the Contract, no longer exists; and
6. the Contractor shall return to work within 3 Business Days of payment by the Principal of the amount outstanding or such lesser period as may be stated in Annexure Part A (being not less than 1 Business Day).

If the Contractor has complied with the obligations set out in this Clause, any inability in the Contractor to return to work within the required time will not be an event giving rise to a right, in the Principal, to damages or to terminate the Contract.

If the Contractor does not resume the work in accordance with this Clause or does not comply with its obligations under this Clause:

1. the Superintendent may direct the Contractor to omit the whole or part of the suspended work (and thereafter the Principal may engage others to carry out the suspended work); or
2. the Principal may give a notice under Clause 44.4(b) as if the Contractor had committed a substantial breach of contract.

In the event that the Superintendent gives a direction to omit work under this Clause and if the direction causes the Contractor to incur more or less cost than the Contractor could reasonably have anticipated at the time of tendering, the difference shall be valued under Clause 40.5.

***54.10*** ***Subcontractor suspension***

If the Principal becomes aware that a subcontractor is entitled to suspend work pursuant to the Security of Payment Act, the Principal may (in its absolute discretion) pay the subcontractor such money that is or may be owing to the subcontractor in respect of that work, and any amount paid by the Principal shall be a debt due from the Contractor to the Principal.

***54.11 Indemnity***

The Contractor shall indemnify the Principal against all damage, expense (including legal costs), loss (including consequential and economic loss) or liability of any nature suffered or incurred by the Principal arising out of:

(a) a suspension pursuant to the Security of Payment Act by a subcontractor of work which forms part of the Work; or

(b) a failure by Contractor to comply with Clause 54.2.

New Clause 55 Occupational Health and Safety

The following new Clause 55 is added to the General Conditions:

***55 Occupational Health and Safety***

***55.1 Definition – Principal Contractor***

In this Clause Principal Contractor has the meaning given to that term in regulation 333 of the Occupational Health and Safety Regulations 2017 (Vic).

***55.2 Obligations Under the OHS Law***

(a) In carrying out its obligations under this Contract the Contractor must comply with the OHS Law. The Contractor must upon request by, or on behalf of, the Principal demonstrate that it is complying with, and will continue to comply with the OHS Law including having in place the safe systems for and in relation to the execution of the work under the Contract required by the OHS Law.

(b) If an incident occurs which is required to be reported pursuant to a Legislative Requirement or if a 'near miss' occurs (being an event which could have given rise to an incident which is required to be reported pursuant to a Legislative Requirement) the Contractor must, as soon as practicable after the occurrence of the event, advise the Superintendent, the Principal and (if required) the relevant regulatory authority of the occurrence of the event, the circumstances giving rise to the event and the steps the Contractor will take so as to prevent the event (or a similar event) occurring again in the future. The Contractor must provide copies of all relevant documents with respect to the matter to the Principal (including all corrective actions).

***55.3 Contractor as Principal Contractor***

(a) This Clause applies if so indicated in Annexure Part A and unless Clause 55.5 applies.

(b) If indicated in Annexure Part A, the Principal appoints, or will procure the appointment, of the Contractor as the Principal Contractor in accordance with regulation 333(1)(a) of the Occupational Health and Safety Regulations 2017 (Vic). The Principal acknowledges that the appointment of a Principal Contractor does not abrogate the obligations of the Principal under the OHS Law.

(c) The Contractor acknowledges and accepts the appointment as Principal Contractor and agrees to carry out and discharge the obligations and accept all liability of a Principal Contractor contained in the OHS Law.

(d) The Principal authorises the Contractor to manage and control the Site to the extent necessary to discharge the duties imposed on a Principal Contractor for the period commencing from the date the Contractor takes possession of the Site and ending on the Date of Practical Completion. The Contractor acknowledges that its responsibilities as Principal Contractor continue (or resume) for any Works undertaken prior to the date the Final Payment Schedule is issued. The Contractor acknowledges and accepts that the management and control of the Site afforded by the Principal is sufficient to allow the Contractor to fulfil the obligations of a Principal Contractor.

***55.4 Contractor not Principal Contractor***

If the Contractor is not the Principal Contractor or is not to be appointed as the Principal Contractor, then the Contractor must cooperate with the Principal Contractor in the discharge of the obligations as Principal Contractor and comply with any instruction given by the Principal Contractor in its capacity as Principal Contractor.

***55.5 Principal Contractor where the Contractor has Comcare insurance***

(a) This Clause shall apply to the exclusion of Clause 55.3 in the event that the Contractor is licensed to self insure under the Safety, Rehabilitation and Compensation Act 1988 (Cth) and is therefore covered by the Occupational Health and Safety Act 1991 (Cth) (the Commonwealth OHS Act) rather than the Occupational Health and Safety Act 2004 (Vic) (the Victorian OHS Act) and the Occupational Health and Safety Regulations 2017 (Vic) (the Victorian OHS Regulations).

(b) If indicated in Annexure Part A, the Principal appoints, or will procure the appointment, of the Contractor as the Principal Contractor in accordance with regulation 333(1)(a) of the Victorian OHS Regulations.

(c) The Contractor acknowledges and accepts the appointment as the Principal Contractor and agrees to strictly comply with the terms of the Victorian OHS Act and the Victorian OHS Regulations and do all things necessary and in a manner which ensures that the Contractor satisfies the obligations of a Principal Contractor under the Victorian OHS Regulations which apply, or which, but for the Commonwealth OHS Act, would apply.

(d) The Principal authorises the Contractor to manage and control the Site to the extent necessary to discharge the duties imposed on a Principal Contractor by the Victorian OHS Regulations for the period commencing from the date the Contractor takes possession of the Site and ending on the Date of Practical Completion. The Contractor acknowledges that its responsibilities as Principal Contractor continue (or resume) for any Works undertaken prior to the date the Final Payment Schedule is issued. The Contractor acknowledges and accepts that the management and control of the Site afforded by the Principal is sufficient to allow the Contractor to fulfil the obligations of a Principal Contractor.

(e) The Contractor undertakes to:

(i) immediately comply with directions on safety issued by any relevant authority or by the Principal;

(ii) indemnify and hold harmless the Principal against any loss suffered by the Principal which may arise as a result of any breach by the Contractor of the Victorian OHS Act or the Victorian OHS Regulations; and

(iii) promptly upon request by, or on behalf of, the Principal demonstrate that the obligations of a Principal Contractor under the Victorian OHS Regulations have been and will continue to be met, including providing evidence of measures taken to achieve compliance.

***55.6 Health and safety in the execution of the work under the Contract***

In connection with the execution of the work under the Contract, the Contractor shall, as far as practicable, ensure the health and safety of all persons including without limitation, members of the public, the Contractor’s employees, subcontractors and agents.

The Contractor acknowledges that acts or omissions of the Contractor may affect the ability of the Principal to comply with duties and obligations arising under the OHS Law. The Contractor shall ensure so far as is practicable that it does not by its acts or omissions cause or contribute to any breach by the Principal of any provision of the OHS Law and shall take all steps as are practicable to assist the Principal in complying with the provisions of the OHS Law.

The Contractor indemnifies the Principal to the extent permitted by law in respect of any liability, costs, losses or expenses whatsoever arising in connection with any breach of the OHS Law by the Principal which the Contractor has caused or contributed by a breach of this Clause 55. The indemnity given under this paragraph does not restrict or alter and is not restricted or altered by any indemnity given elsewhere under this Contract including under Clause 55.5(e)(ii).

New Clause 56 Environment

The following new Clause 56 is added to the General Conditions:

***56 Environment***

(a) The Contractor shall comply with and, at the request of the Superintendent demonstrate that it as in place and complies with an environmental management system.

(b) The Contractor shall so far as is practicable ensure that in connection with the execution of the work under the Contract, the Principal does not become liable in connection with any environmental pollution or like matter.

(c) The Contractor shall, to the extent permitted by law, indemnify the Principal in respect of any liability arising in connection with a statutory obligation relating to a matter in Clause 56(b) and any associated costs, losses or expenses.

New Clause 57 Major Projects Skills Guarantee

The following new Clause 57 is added to the General Conditions:

***57 Major Projects Skills Guarantee***

*This Clause applies if indicated in Annexure Part A.*

***57.1 Definitions***

The following definitions apply in this Clause:

'Act' means the Education and Training Reform Act 2006.

'Apprentice' means a person whom an employer has undertaken to train under a Training Contract.

'Engineering Cadets' means those persons who are combining formal university training in an engineering or related discipline with practical work experience.

'GST' has the meaning given in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

'Group Training Organisation' means an organisation that employs Apprentices and Trainees and hosts them out to other businesses to undertake relevant on the job experience.

'Major Project Skills Guarantee Compliance Plan' or 'Compliance Plan' means the plan set out in Attachment 1 of Annexure Part I.

'Registered Education and Training Organisation' (RTO) means a person or body registered under Part 4.3 of the Act to deliver an accredited course or award or issue a registered qualification.

'Trainee' means a person (other than an Apprentice) employed under a Training Contract.

'Training Contract' has the meaning given in the Act.

'Victorian Registration and Qualifications Authority' (VRQA) is the statutory body established under Chapter 4 of the Act whose functions include the registration and regulation of apprenticeships and traineeships, and administering legislation including but not limited to the Act and the Education and Training Reform Regulations 2007.

***57.2 Major Projects Skills Guarantee Compliance Plan***

(a) The Contractor must, in performing its obligations under this Contract, comply with the Major Projects Skills Guarantee Compliance Plan (Compliance Plan).

(b) The Contractor acknowledges and agrees that its obligations as set out in the Compliance Plan apply during the term of the Contract, any extensions to the term and until all of its reporting obligations as set out in Clause 57.3 are fulfilled.

(c) The Contractor agrees that the minimum labour hours requirements set out in the Compliance Plan will:

(i) be applied to the Contract as a whole (or to all of the works specified in the Contract);

(ii) not be applied on the basis of individual Contract packages or components; and

(iii) apply to all work conducted off site provided that the work has been specified as part of the Contract.

(d) Subject to Clauses 57.2(e),(f) and (g) the parties agree that labour hours performed by:

(i) Apprentices, Trainees or Engineering Cadets, either separately or in any combination; or

(ii) pre-existing or new Apprentices, Trainees or Engineering Cadets, either separately or in any combination,

may be included in determining whether the requirements of the Major Projects Skills Guarantee Compliance Plan have been achieved.

(e) Work hours performed by Apprentices may include Apprentices directly employed by the Contractor or Apprentices engaged through Group Training Organisations. Contributions from Apprentices must be from Apprentices registered with the Victorian Registration and Qualification Authority.

(f) Work hours performed by Trainees must be from Trainees registered with the Victorian Registration and Qualification Authority.

(g) Time spent by Apprentices, Trainees or Engineering Cadets attending course related education in accordance with a Training Contract at a Registered Education and Training Organisation, or other educational institution may be included in determining whether the requirements of the Compliance Plan have been achieved.

(h) The Contractor's failure to comply with Clauses 57.2 to 57.4 will constitute a substantial breach of this Contract.

(i) The Principal agrees that where the Contract includes significant maintenance or ongoing service components as part of the work under the Contract, the value of the maintenance or ongoing service components will be included as part of the overall Contract value for the purposes of calculating the deemed estimated overall project labour hours in order to determine whether the Contractor has complied with the minimum 10 percent requirement.

(j) The Contractor must ensure that any Subcontracts entered into by the Contractor in relation to work under the Contract contain clauses requiring Subcontractors:

(i) to comply with the Skills Guarantee and the Compliance Plan to the extent that it applies to work performed under the Subcontract,

(ii) to provide necessary information that allows the Contractor to comply with its reporting obligations under Clause 57.3 of this Contract, and

(iii) to permit the Principal to exercise its inspection and verification rights under Clause 57.4 of this Contract.

***57.3 Reports***

(a) The Contractor must submit written reports (Performance Reports) to the Principal outlining its performance against the Compliance Plan.

(b) The Performance Reports must include details specifying the Contractor's performance in complying with the Compliance Plan. Any deviations from the Compliance Plan must be included in the Performance Reports.

(c) Performance Reports must be submitted by the Contractor to the Principal as specified in Schedule Table 6, Attachment 1, Annexure Part I or otherwise at a frequency of not less one Performance Report at each 12 month anniversary of the commencement date of the Contract until completion of the Contract.

(d) In addition to the Performance Reports the Contractor must also submit:

(i) an interim Performance Report mid-way through the delivery phases for the Contract as set out in Schedule Table 6, Attachment 1, Annexure Part I;

(ii) a final report (Final Report) within 2 months of the date of practical completion or the date the Contract is completed whichever is earlier; and

(iii) a statutory declaration made by the Contractor declaring that the contents of the Final Report are true and correct, which must be submitted together with the Final Report.

(e) Where maintenance or ongoing service components form part of the work under the Contract, the Final Report must be submitted at the time at which the primary substance of the work under the Contract has been practically completed (excluding any ongoing maintenance or service work).

***57.4 Verification of Contractor's compliance with Major Projects Sills Guarantee: Compliance Plan***

(a) The Contractor agrees that the Principal will have the right to inspect the Contractor's records in order to verify compliance with the and the Compliance Plan.

(b) The Contractor must:

(i) permit the Principal or its duly authorised representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at the Principal's expense of all records maintained by the Contractor for the purposes of this Contract at the Contractor's premises, or provide copies of those records to the Principal at its request;

(ii) permit the Principal, or its duly authorised representative from time to time to undertake a review of the Contractor's performance in accordance with the Compliance Plan; and

(iii) ensure that its employees, agents and subcontractors give all reasonable assistance to any person authorised by the Principal to undertake such audit or inspection.

(c) The Contractor acknowledges and agrees that the Principal, and the Principal's duly authorised representative are authorised to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Compliance Plan.

(d) The obligations set out in this Clause 57.4 are in addition to and do not derogate from any other obligation under this Contract.

***57.5 Use of Information***

The Contractor acknowledges and agrees that the statistical information contained in the Compliance Plan and the measures of the Contractor's compliance with the Compliance Plan as reported will be:

(a) reported by the Principal to the Department of Economic Development, Jobs, Transport and Resources;

(b) considered in the assessment or review of the Contractor's eligibility to tender for future Victorian Government Contracts.

**The Annexures to these General Conditions of Contract are amended or inserted as set out in the following pages.**

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART A |

|  |  |  |  |
| --- | --- | --- | --- |
| This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract. | | | |
|  |  |  | |
|  | The law applicable is that of the State or Territory of:  (Clause 1) | (*if nothing stated, the State or Territory where the Site is located*) | |
|  |  |  | |
|  | Payments under the Contract shall be made at:  (Clause 1) |  | |
|  |  |  | |
|  | The Principal:  (Clause 2) |  | |
|  |  |  | |
|  | The address of the Principal: |  | |
|  |  |  | |
|  | The Superintendent:  (Clause 2) |  | |
|  |  |  | |
|  | The address of the Superintendent: |  | |
|  |  |  | |
|  | Site:  (Clause 2 and Clause 27) | (*if nothing stated, the land and other places made or which are to be made available to the Contractor by the Principal for the purposes of the Contract and which are designated by the Principal as being the site*) | |
|  |  |  | |
| # | The Date for Administrative Completion:  (Clause 2) | days after the Date of Practical Completion  (*if nothing stated, 14 days*) | |
|  |  |  | |
|  | Limits of accuracy applying to quantities for which the Principal accepted a rate or rates:  (Clause 3.3(b)) |  | |
|  |  |  | |
|  | Bill of Quantities—the alternative applying:  (Clause 4.1) |  | |
|  |  |  | |
|  | The time for lodgement of the priced copy of the Bill of Quantities:  (Clause 4.2) |  | |
|  |  |  | |
| [[1]](#footnote-2)# | Contractor shall provide security in the amount of:  (Clause 5.2) |  | |
|  |  |  | |
| [[2]](#footnote-3)# | Contractor shall provide security in the form of:  (Clause 5.3) | (*if nothing stated, the Contractor must provide security in the form of two approved unconditional undertakings given by an approved financial institution or insurance company, each for 50% of the amount set out in Clause 5.2*) | |
|  |  |  | |
| [[3]](#footnote-4)# | Principal shall provide security in the amount of:  (Clause 5.2) | (*if nothing stated, none required*) | |
|  |  |  | |
| # | The period of notice required of a party's intention to have recourse to retention moneys and/or to convert security:  (Clause 5.5) | (*if nothing stated, five days*) | |
|  |  |  | |
|  | Time at which the Principal's entitlement to security and retention moneys is reduced:  (Clause 5.7) | (*if nothing stated the later of the issue of the Certificate of Administrative Completion, the issue of the Certificate of Practical Completion or the Contractor complying with the requirements of Clause 42.6*) | |
|  |  |  | |
|  | The percentage to which the entitlement to security and retention moneys is reduced:  (Clause 5.7) | (*if nothing stated, 50 per cent*) | |
|  |  |  | |
|  | Interest on retention moneys and security—the alternative applying:  (Clause 5.9) | (*if nothing stated, Alternative 1 applies*) | |
|  |  |  | |
|  | Contract Documents and order of precedence to be applied in interpreting the contract:  (Clause 8.1) | (a) Formal Instrument of Agreement;  (b) In the absence of a Formal Instrument of Agreement being executed, the notice in writing of acceptance of tender;  (c) Annexure Part B to AS 2124-1992 General Conditions of Contract;  (d) AS 2124-1992 General Conditions of Contract and Annexure Part A;  (e) the specifications included in Annexure Part C;  (f) the drawings included in Annexure Part C;  (g) the balance of the Annexures not referred to in paragraphs (a) to (f); and  (h) any further documents in addition to the above, if any, described in the Formal Instrument of Agreement referred to in Clause 6.2 of the Contract. | |
|  |  |  | |
|  | Can notices be sent electronically?  (Clause 7) | Yes  No  (*if nothing stated, notices may not be sent electronically*) | |
|  | *If notices can be sent electronically, means of sending:*  *Relevant email address:*  *The relevant electronic contract management system is:* | *Email* | *Electronic contract management system* |
|  | |
|  |  |  | |
|  | Addressee for notices under Clause 46 or Clause 47:  (Clause 7(d)) |  | |
|  |  |  | |
|  | The number of copies to be supplied by the Principal:  (Clause 8.3) |  | |
|  |  |  | |
|  | The number of copies to be supplied by the Contractor:  (Clause 8.4) |  | |
|  |  |  | |
|  | The time within which the Superintendent must give a direction as to the suitability and return the Contractor's copies:  (Clause 8.4) |  | |
|  |  |  | |
|  |  |  | |
|  | Subcontracting threshold –amount  (Clause 9.2) | (*if nothing stated, the lesser of $50,000 and 10% of the Contract Sum*) | |
|  |  |  | |
|  | Work which cannot be subcontracted without approval:  (Clause 9.2) |  | |
|  |  |  | |
|  | Provisional Sums  (Clause 2 and Clause 11) | (*together with any sums within the definition of this expression and which are elsewhere in the Contract Documents and each of the provisional sums is included in the Contract Sum*) | |
|  |  |  | |
|  | The percentage for profit and attendance:  (Clause 11(b)) |  | |
|  |  |  | |
|  | The amount or percentage for profit and attendance:  (Clause 11(c)) |  | |
|  |  |  | |
|  | Principal’s Policies and Procedures  (Clause 2 and Clause 14.1) | (*if nothing stated, there are no items identified*) | |
|  |  |  | |
|  | Insurance of the Works—the alternative applying:  (Clause 18) | (*if nothing stated, Alternative 1 – Option A applies*) | |
|  |  |  | |
|  | The assessment for insurance purposes of the costs of demolition and removal of debris:  (Clause 18(ii)) |  | |
|  |  |  | |
|  | The assessment for insurance purposes of consultants' fees:  (Clause 18(iii)) |  | |
|  |  |  | |
|  | The value of materials to be supplied by the Principal:  (Clause 18 (iv)) |  | |
|  |  |  | |
|  | The additional amount or percentage:  (Clause 18(v)) |  | |
|  |  |  | |
|  | Public Liability Insurance—the alternative applying:  (Clause 19) | (*if nothing stated, Alternative 1 – Option A applies*) | |
|  |  |  | |
|  | The amount of Public Liability Insurance shall be not less than:  (Clause 19) |  | |
|  |  |  | |
|  | The time for giving possession of the Site:  (Clause 27.1) |  | |
|  |  |  | |
| [[4]](#footnote-5)# | Program requirements:  (Clause 33.2) | (*if nothing stated, there are no additional program requirements*) | |
|  |  |  | |
|  | Requirements for Administrative Completion:  (Clause 2 and clause 35.2A) | (*if nothing stated, the following are requirements of Administrative Completion:*   1. *all shop drawings and as built drawings as required by the Contract or requested by the Superintendent;* 2. *all original warranties;* 3. *evidence of compliance with all relevant aspects of the quality assurance system including, but not limited to, having undertaken all final inspections and testing of the Works required by that system*.) | |
|  |  |  | |
| # | The Date for Practical Completion:  (Clause 35.2) |  | |
|  |  |  | |
| # | Liquidated Damages (Practical Completion) per day:  (Clause 35.6) |  | |
|  |  |  | |
| # | Liquidated damages (Administrative Completion) per day:  (Clause 35.6A) |  | |
| # | Limit of Liquidated Damages (Practical Completion and Administrative Completion):  (Clause 35.7) |  | |
|  |  |  | |
| # | Bonus per day for early Practical Completion:  (Clause 35.8) |  | |
|  |  |  | |
| # | Limit of bonus:  (Clause 35.8) |  | |
|  |  |  | |
| # | Extra costs for Delay or Disruption:  (Clause 36) | Event | |
|  |  |  | |
| # | The Defects Liability Period:  (Clause 37) |  | |
|  |  |  | |
|  | The Charge for overheads, profit, etc. for Daywork:  (Clause 41(f)) |  | |
|  |  |  | |
|  | Times for Payment Claims:  (Clause 42.1) |  | |
|  |  |  | |
|  | Unfixed Plant and Materials for which payment claims may be made notwithstanding that they are not incorporated in the Works:  (Clause 42.1(ii)) |  | |
|  |  |  | |
|  | Retention Moneys on:  (Clause 42.3) | (a) work incorporated in the Works and any work or items for which a different amount of retention is not provided, .......% of the value until .......% of the Contract Sum is held;  (b) items on Site but not yet incorporated in the Works, .......%;  (c) items off Site but in Australia .......%;  (d) items not in Australia .......%;  (e) disbursements incurred by the Contractor for customs duties, freight, marine insurance, primage, landing and transport in respect of the work under the Contract .......%; | |
|  |  |  | |
|  | Unfixed Plant or Materials—the alternative applying:  (Clause 42.4) |  | |
|  |  |  | |
|  | The rate of interest on overdue payments:  (Clause 42.9) | per cent per annum (*if nothing stated, the rate set by the Attorney General under the Penalty Interest Rate Act 1983*) | |
|  |  |  | |
|  | The delay in giving possession of the Site which shall be a substantial breach:  (Clause 44.7) |  | |
|  |  |  | |
|  | The alternative required in proceeding with dispute resolution:  (Clause 47.2) | (*if nothing stated, alternative 1 applies*) | |
|  |  |  | |
|  | The person to nominate an arbitrator:  (Clause 47.3) |  | |
|  |  |  | |
|  | Location of arbitration:  (Clause 47.3) |  | |
|  |  |  | |
|  | Does VIPP apply under this Contract? (Clause 52) | Yes  No  (*if nothing stated, No is selected*) | |
|  |  |  | |
|  | Authorised Nominating Authority  (Clause 54.7) | 1. Adjudicate Today Pty Limited; 2. Australian Solutions Centre Pty Ltd; 3. Resolution Institute; 4. Rialto Adjudications Pty Ltd; 5. RICS Dispute Resolution Service; or 6. such other entity authorised pursuant to the Building and Construction Industry Security of Payment Act 2002 (Vic). | |
|  | Period for Contractor to return to work following suspension under the Security of Payment Act:  (Clause 54.9(f)) | Business Days  (*if nothing stated, 3 Business Days*) | |
|  |  |  | |
|  | Is the Contractor appointed as Principal Contractor?  (Clause 55) | Yes  No  (*if nothing stated, yes is selected and the Contractor is appointed as Principal Contractor*) | |
|  |  |  | |
|  |  |  | |
|  |  |  | |
| . | Does the Major Project Skills Guarantee apply under this Contract? (Clause 57) | Yes  No  (*if nothing stated, no is selected*) | |

**APPROVED FORM OF UNCONDITIONAL UNDERTAKING**

(Clause 5.3)

At the request of. . . . . . . . . . . . . . . . . . . . . . . . . . . . . . . (`the Contractor') and in consideration of . . . . . . . . . . . . . . . . . . . . . . . . . . . .(`the Principal') accepting this undertaking in respect of the contract for   
   
. . . . . . . . . . . . . . . . . . . . . . . . . (`the Financial Institution') unconditionally undertakes to pay on demand any sum or sums which may from time to time be demanded by the Principal to a maximum aggregate sum of $   
( )  
The undertaking is to continue until notification has been received from the Principal that the sum is no longer required by the Principal or until this undertaking is returned to the Financial Institution or until payment to the Principal by the Financial Institution of the whole of the sum or such part as the Principal may require.

Should the Financial Institution be notified in writing, purporting to be signed by . . . . . . . . . . . . . . . . . . . for and on behalf of the Principal that the Principal desires payment to be made of the whole or any part or parts of the sum, it is unconditionally agreed that the Financial Institution will make the payment or payments to the Principal forthwith without reference to the Contractor and notwithstanding any notice given by the Contractor not to pay same.

Provided always that the Financial Institution may at any time without being required so to do pay to the Principal the sum of $   
( )

less any amount or amounts it may previously have paid under this undertaking or such lesser sum as may be required and specified by the Principal and thereupon the liability of the Financial Institution hereunder shall immediately cease.

DATED at..................................this..................................day of...............................20.......

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART C |

**Specifications and Drawings**

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART D |

**VIPP Schedules**

1. The VIPP Plan is at Attachment 1 to this Annexure.

2. The Contractor must complete the VIPP Monitoring Table at Attachment 2 to this Annexure for the purposes of its VIPP Compliance Reporting obligations as set out in Clause 52 of the Contract. The Contractor must provide the VIPP Monitoring Table to the Superintendent upon Practical Completion or within one month of the Date of Completion Date (whichever occurs first).

3. The Contestable Items are set out in Attachment 3 to this Annexure.

Attachment 1 - VIPP Plan

*[VIPP Plan to be inserted as Attachment 1]*

Attachment 2 - VIPP Monitoring Table

**ANZ value-added activity**

|  |  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
|  |  |  | VIPP Commitments | | Progress | Secured VIPP Outcomes | | |  |  |
| Item Description | Brand /manufacturer | Supplier | % of Local Content | % of Total Local Content | % of Local Content | % of Local Content (A) | % of Contact Content (B) | % of Total Local Content (C) = (A x B) | ICN Assistance (Y/N) | Comments |
| E.g. Item 1 |  |  |  |  |  |  |  |  |  |  |
| TOTAL ANZ value-added activity | | | Total Committed: |  |  | Total Secured: | 100 % |  |  |  |

Employment

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| New Jobs | | Existing Jobs | | Total Jobs Committed | Total Jobs Secured | Difference / Comments |
| Committed | Secured | Committed | Secured |
|  |  |  |  |  |  |  |

Apprentices/ trainees

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| New Apprentices/ trainees | | Existing Apprentices/ trainees | | Total Apprentices/ trainees Committed | Total Apprentices/ trainees Secured | Difference |
| Committed | Secured | Committed | Secured |
|  |  |  |  |  |  |  |

Attachment 3 – Contestable Items

As set out in Attachment 1 (or as otherwise approved by ICN)

Attachment 4 - Statutory Declaration

State of Victoria

**Statutory Declaration**

I,

[full name]

of [address]

, do solemnly and sincerely declare that

[occupation]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ achieved the Victorian Industry

[contracted company]

Participation Policy objectives and outcomes relating to local content; employment;

skills and technology transfer; and apprentices/ trainees reflected in the VIPP

Monitoring Table for \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ as submitted to

[name and tender number of procurement activity]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ on \_\_\_\_\_\_/\_\_\_\_/\_\_\_\_\_\_

[agency] [date]

**I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.**

Declared at

this day of 20 ……………………………………...

Signature of person making this declaration

[to be signed in front of an authorised witness]

Before me,

………………………………………………

Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART E |

**Form of Formal Instrument of Agreement**

Formal Instrument of Agreement

|  |  |
| --- | --- |
| Date |  |

Parties

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Principal** |
| Notice details | **[insert]** |

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Contractor** |
| Notice details | [insert] |

|  |  |
| --- | --- |
| **Project** | **[insert]** |

1. The Principal desires to procure the execution of work under the Contract and the delivery of the Works to the Principal.
2. The Contractor has agreed to perform work under the Contract and the Works in accordance with this Contract.

**IT IS AGREED** as follows:

Words and phrases defined in the Contract have the same meaning in this Formal Instrument of Agreement as they have in the Contract.

**1. Performance of the Works**

(a) The Contractor must perform work under the Contract and the Works in accordance with the Contract.

(b) The Contractor must, as between the Contractor and the Principal, bear all risks and costs (whether ascertainable at the date of this Contract or not) arising out of or in connection with the performance of work under the Contract and the Works, except to the extent expressly made the responsibility of the Principal under the Contract.

**2. Contract Sum**

The Principal must pay to the Contractor the Contract Sum, and any other sums which become payable under the Contract, in accordance with the Contract.

**3. Authority**

Each person signing this Contract represents that he or she has authority at the date of signing to do so.

**Executed as an Agreement**

[*Insert Principal's execution block, for example:*]

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** for and on behalf of [***insert Principal's details***] |  |  |  |
|  | ← |  | ← |
| Signature of authorised representative |  | Signature witness |  |
| Name of authorised representative (print) |  | Name of witness (print) |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **Executed** by[#Contractor]in accordance with Section 127 of the *Corporations Act 2001* in the presence of |  |  |  |
|  | ← |  | ← |
| Signature of director |  | Signature of director/company secretary  (Please delete as applicable) |  |
| Name of director (print) |  | Name of director/company secretary (print) |  |

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART F |

**Form of Certificate of Practical Completion**

Certificate of Practical Completion

From:

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |  |
| Short form name | **Superintendent** |
| Notice details | [insert] |

To:

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |  |
| Short form name | **Principal** |
| Notice details | [insert] |

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Contractor** |
| Notice details | [insert] |

|  |  |
| --- | --- |
| **Contract** | **[insert name and date of Contract]** |

Words and phrases defined in the Contract have the same meaning in this Certificate of Practical Completion as they have in the Contract.

**1. Certificate**

Under Clause 42.3 of the Contract entered into between the Principal and the Contractor, the Superintendent certifies that Practical Completion was reached on the date specified below:

Date: [insert]

**2. No relief**

This certificate does not relieve the Contractor of its obligation to execute the Works in accordance with the Contract.

Superintendent Date of issue

Attachments: [insert, if applicable]

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART G |

**Form of Conditional Certificate of Practical Completion**

Conditional Certificate of Practical Completion

From:

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Superintendent** |
| Notice details | [insert] |

To:

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Principal** |
| Notice details | [insert] |

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Contractor** |
| Notice details | [insert] |

|  |  |
| --- | --- |
| **Contract** | **[insert name and date of Contract]** |

Words and phrases defined in the Contract have the same meaning in this Conditional Certificate of Practical Completion as they have in the Contract.

**1. Certificate**

Under Clause 42.5A of the Contract entered into between the Principal and the Contractor, the Superintendent issues a Conditional Certificate of Practical Completion.

**2. Defects**

The Superintendent confirms that the following items remain to be completed by the Contractor in accordance with Clause 42.5A of the Contract:

|  |  |
| --- | --- |
| Outstanding items | Date for completion |
| [Insert, including:  (a) items which are defects;  (b) any work which is incomplete; and  (c) defects which are characterised by the Superintendent as priority defects.] | [insert] |
| [insert] | [insert] |

**3. Security [Note: optional clause, delete if not relevant]**

The Superintendent certifies that the Principal is entitled to hold the following amount of security, which would otherwise be released upon or after Practical Completion, with such security being held until the expiration of 14 days after the date on which the last of the items listed on the defects list is completed:

[insert the relevant amount of security the Principal is entitled to hold]

**4. Liquidated Damages [Note: optional clause, delete if not relevant]**

The Superintendent certifies that the Principal's entitlement to liquidated damages under Clause 35.6 is reduced as follows:

[insert relevant reduction]

**5. No relief**

This certificate does not relieve the Contractor of its obligation to execute the Works in accordance with the Contract.

Superintendent Date of issue

Attachments: [insert, if applicable]

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART H |

**Form of Payment Claim**

Form of Payment Claim

From:

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Contractor** |
| Notice details | [insert] |

To:

|  |  |
| --- | --- |
| Name | [insert] |
| ABN | [insert] |
| ACN | [insert] |
| Short form name | **Superintendent** |
| Notice details | [insert] |

|  |  |
| --- | --- |
| **Contract** | **[insert name and date of Contract]** |

Words and phrases defined in the Contract have the same meaning in this Certificate of Practical Completion as they have in the Contract.

**1. Payment claim – work under the Contract**

Under Clause 42.1 of the Contract entered into between the Principal and the Contractor, the Contractor claims payment in relation to work under the Contract as set out below:

[*Insert:*

*(i) the amount claimed by the Contractor and the basis for calculation of that amount;*

*(ii) the amount of any GST paid or payable by the Contractor with respect to the amount claimed;*

*(iii) the Contractor’s address for payment;*

*(iv) the Principal’s Reference number;*

*(v) the details of any claim arising under Clause 12 or otherwise in respect of a Latent Condition;*

*(vi) the details of any claim arising under Clause 14.1 or otherwise in respect of the consequences of a change in a Legislative Requirement as described in Clause 14;*

*(vii) the details of any claim arising under Clause 36 or otherwise in respect of extra costs incurred by reason of delay; and*

*(viii) the details of any claim capable of being valued under Clause 40.5(ii) or otherwise in respect of delay or disruption or loss of productivity.*]

**2. Payment claim – other claims**

Under Clause 42.1 of the Contract entered into between the Principal and the Contractor, the Contractor claims payment as set out below for items other than in relation to the work under the Contract:

[*Insert*

*(i) separate details of each claim;*

*(ii) each such claim with a unique numerical identifier with the identifiers being consecutive and commencing with the number 1;*

*(iii) the factual circumstances giving rise to the claim; and*

*(iv) the clause of clauses of the contract relied on, or, in the absence of reliance on the contract, the other legal basis relied on in support of the claim.*]

**3. Payment claim warranties**

In making this claim for payment under Clause 42.1 of the Contract, the Contractor warrants that:

(a) it has provided the Principal with security for the amount (if any) required under Clause 5;

(b) it has executed the formal instrument of agreement in accordance with Clause 6:

(c) it has entered into agreements in accordance with Clause 9.2, and each agreement entered into in accordance with Clause 9.2 has not been varied in a manner that is inconsistent with Clause 9.2;

(d) has effected and maintained the insurance required by the Contract and (if requested) provided evidence of this to the Superintendent;

(e) has complied with its obligations in relation to health and safety in accordance with Clause 15A and Clause 55 or Clause 56 (as applicable); and

(f) has complied with any other obligation stated in the Contract Documents to be a condition precedent to submitting a payment claim.

Contractor Date

Attachments: [insert, if applicable]

|  |  |
| --- | --- |
| **Victorian Government Special Conditions of Contract for use in association with Australian Standard AS 2124 - 1992.**  ANNEXURE to the Australian Standard General Conditions of Contract | PART I |

**Major Project Skills Guarantee**

[***Print a copy of the Contractor's Major Projects Skills Guarantee Compliance Plan and attach it behind Attachment 1 to this Schedule***]

* 1. Major Projects Skills Guarantee Compliance Plan

The Major Projects Skills Guarantee Compliance Plan is attached at Attachment 1 to this Schedule.

* 1. Reporting

| **Report** | **Due Date** |
| --- | --- |
| Compliance Plan |  |
| Performance Reports (Clause 57.3) |  |
| Interim Performance Report (Clause 57.3(d)(i) |  |
| Final Report (Clause 57.3(d)(ii) |  |
| Statutory Declaration (Clause 57.3(d)(iii) |  |

* 1. Statutory Declaration

The form of Statutory Declaration required for the purposes of Clause 57.3(d)(i) is attached at Attachment 2 to this Schedule. This statutory declaration must be made by the Contractor's company director, Chief Executive or Chief Financial officer.

1. Major Projects Skills Guarantee Compliance Plan

**Contract**

Number:  
Title:  
Deemed Hours:

**Principal Contractor**

Trading Name:  
Address:  
Phone:  
Email:

**Contact Person**

Name:

………………………………………………… ………………….  
Signature of Authorised Person Date

**Table 1. Estimated utilisation**

*Please indicate how many of the following groups are expected to be utilised for all of the works specified in the contact and over the life of the contact*

|  | **Existing** (at commencement) | **New** (at commencement) |
| --- | --- | --- |
| No. Apprentices |  |  |
| No. Trainees |  |  |
| No. Engineering cadets |  |  |

**Table 2. Estimated Occupational profile**

*Please specify what types of apprentices, trainees or engineering cadets are expected to be used.*

| **Occupational type** | **Estimated Number** | **Estimated number** | |
| --- | --- | --- | --- |
|  |  | **Existing New** | |
| **Apprentices**  a*. e.g. plumbers*  b.  c.  d.  e.  f.  g.  h.  i.  h. | *6* | *1* | *5* |
| **Trainees**  a.  b.  c.  d.  e.  f.  g. |  |  |  |
| **Engineering cadets**  a.  b.  c.  d. |  |  |  |

**Acknowledgement**

We are aware and acknowledge that under the Major Projects Skills Guarantee, the Victorian Government actively encourages the use of Victorian apprentices, Victorian trainees and/or engineering cadets who are drawn from groups who are under-represented in vocational training such as women, and/or from those who have faced barriers to employment generally such as such as indigenous, those with a disability, older people, or recently retrenched employees.

Acknowledged ⬜

**Table 3 Compliance strategy/plan**

Please outline the strategy and/or plan that will be adopted in order to achieve the minimum labour hours requirement

Minimum labour hours agreed which must be performed by Apprentices, Trainees or Engineering Cadets:\_\_\_\_\_\_\_\_\_\_\_\_\_\_ hours.

**Table 5. Estimated Compliance Schedule**

*Please indicate when compliance is expected to be achieved.*

| **Contract stage/milestones** | **Est. overall labour hours** | **Est. hours contributed by apprentices, trainees, cadets** | **% compliance with overall target** |
| --- | --- | --- | --- |
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**Table 6. Proposed Compliance Reporting Schedule**

Please outline the proposed compliance reporting schedule

**Major Projects Skills Guarantee: Interim and Final Completion Report**

A statutory declaration must be submitted with interim and final reports

Interim Compliance Report ****

Final Compliance Report ****

**Contract**

Number:  
Title:  
Deemed Hours:

**Principal Contractor**

Trading Name:  
Address:  
Phone:  
Email:

**Contact Person:**

Date:

**Performance Summary**

**Table 1. Overall outcomes**

| **Agreed Deemed hours**  (as per plan) | **Total Hours Achieved - Interim** | **As % of**  **target** | **Total Hours Achieved - Final** | **As % of target** |
| --- | --- | --- | --- | --- |
| Minimum 10% target = |  |  |  |  |
|  |  |  |  |  |
|  |  |  |  |  |

**Table 2. Disaggregated outcomes**

|  | **Total hours** | **Hours from new** | **Hours from existing** |
| --- | --- | --- | --- |
| **Apprentices** |  |  |  |
| **Trainees** |  |  |  |
| **Engineering cadets** |  |  |  |
| **TOTAL** |  |  |  |

**Table 3. Representation**

|  | **No. Female** | **No. Indigenous** | **No. Mature aged**  (45+) | **No. CALD**  **Culturally & linguistically diverse** | **No. With Disability** |
| --- | --- | --- | --- | --- | --- |
| **Apprentices** |  |  |  |  |  |
| **Trainees** |  |  |  |  |  |
| **Engineering cadets** |  |  |  |  |  |

I declare the above information is true and correct

………………………………………… …………………

Signature of authorised person Date

**Table 4. Apprentice Details**

| **Apprentice Name** | **Training contract no.\*** | **Occupational type** | **Existing/New** | **Hours** |
| --- | --- | --- | --- | --- |
| *e.g. Sally Smith* | *201206789* | *Plumber* | *New* | *40* |
|  |  |  |  |  |
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\* If ID numbers are not available for reasons such as apprentices/trainees being registered in another state, then a Statutory Declaration must be submitted providing name, gender, date of birth and confirmation that they were employed in Victorian during the reporting period by the principal contractor or sub‑contractor.

I declare the above information is true and correct

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Signature of authorised person Date

**Table 5. Trainee Details**

| **Trainees Name** | **Trainees contract no.\*** | **Occupational type** | **Existing/New** | **Hours** |
| --- | --- | --- | --- | --- |
| *Sam Jones* | *234564234* | *Office Manager* | *Existing* | *120* |
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\* If ID numbers are not available for reasons such as apprentices/trainees being registered in another state, then a Statutory Declaration must be submitted providing name, gender, date of birth and confirmation that they were employed in Victorian during the reporting period by the principal contractor or sub‑contractor.

I declare the above information is true and correct

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Signature of authorised person Date

**Table 6. Cadet Details**

| **Cadet name** | **Educational Institute** | **Occupational Type** | **Existing/New** | **Hours** |
| --- | --- | --- | --- | --- |
| *Karen Marsh* | *Victorian Uni* | *Draftsperson* | *Existing* | *20* |
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I declare the above information is true and correct

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Signature of authorised person Date

1. Statutory Declaration

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
[full name]

of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_,  
[residential address]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, do solemnly and sincerely declare that:  
[occupation]

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

in the State of Victoria, this \_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_20\_\_\_\_\_\_\_

…………………………………………………..   
Signature of deponent making this declaration

Before me:

………………………………………..  
Signature of authorised witness

The authorised witness must print or stamp his or her name, address, and title under section 107A of the *Evidence (Miscellaneous Provisions) Act 1958* (as of 1 January 2010), (previously *Evidence Act 1958*), (e.g. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

1. # Where there are Separable Portions, these items shall be deleted [↑](#footnote-ref-2)
2. # Where there are Separable Portions, these items shall be deleted [↑](#footnote-ref-3)
3. # Where there are Separable Portions, these items shall be deleted [↑](#footnote-ref-4)
4. # Where there are Separable Portions, these items shall be deleted [↑](#footnote-ref-5)